



Department for
Communities and
Local Government

Mr Stephen Bell
GVA
Norfolk House
7 Norfolk Street
Manchester
M2 1DW

Our Ref: APP/R0660/A/13/2209335
Your Ref:

19 January 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HIMOR GROUP LIMITED
LAND BOUNDED BY GREY LANE, ROPE LANE, CREWE ROAD AND A500,
CREWE - APPLICATION REF: 13/2874N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Geoffrey Hill BSc DipTP MRTPI, who held a public local inquiry between 22 July and 27 August 2014 into your clients' appeal against the failure of Cheshire East Council ("the Council") to give notice within the prescribed period of a decision on an application for outline permission for residential development, retirement/care village, local centre, community building, primary school, public open space, allotments, structural landscaping, access arrangements and demolition of existing structures in accordance with application ref: 13/2874N, dated 12 July 2013.
2. The appeal was recovered for the Secretary of State's determination on 17 December 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a proposal for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed, and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. An application for costs by HIMOR Group Ltd (IR1.1) is the subject of a decision letter being issued separately by the Secretary of State.

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5. As recorded by the Inspector at IR1.3, the then Parliamentary Under Secretary of State (Planning) wrote to him on 14 July 2014 asking him to give special attention to the evidence put forward by the parties on the five year housing land position across Cheshire East (see paragraphs 13-14 below).
6. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 in respect of the planning appeal (IR1.4). Like the Inspector, the Secretary of State is content that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the appeal proposals.

Matters arising after the close of the inquiry

7. The Secretary of State has had regard to the correspondence received from Andy Gracie, Mrs S Harrison, R J Taylor and Jayne Puller, which was submitted too late to be considered by the Inspector. The Secretary of State has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. However, copies can be made available on written request to the address at the foot of the first page of this letter. The appellants' agents also wrote to the Secretary of State on 28 November and 11 December 2014 concerning the emerging Cheshire East Local Plan (CELP - see paragraph 9 below) and expressing concern that the Council had not responded to their correspondence on the matter. The Secretary of State did not consider it necessary to circulate that correspondence as he is fully informed of the developments on the CELP (see paragraph 9 below).

Policy considerations

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (BCNRLP), which was adopted in 2005.
9. The Secretary of State has also had regard to the emerging Cheshire East Local Plan Strategy (CELP) (IR3.3). This was submitted for formal examination in May 2014. Hearing sessions took place in late September and early October 2014. However, following an adjournment of the hearings in October 2014 the Development Plan Inspector provided his views on the soundness of the submitted CELP. The examination has been temporarily suspended, while the Council undertake additional work to address the findings. The plan process is ongoing and the Secretary of State has taken this into account in the determination of this appeal as set out in the reasons below.
10. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework – March 2012) and the subsequent planning guidance (2014), as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR10.1.

Development Plan and sustainable development

12. The Secretary of State agrees with the Inspector that the most relevant Development Plan policies are those referred to at IR10.4-10.11. He also agrees with the Inspector's "interim" conclusion at IR10.12 that the appeal scheme does not accord with the saved policies of the BCNRLP. However, for the reasons given at IR10.13-10.17, the Secretary of State agrees with the Inspector at IR10.17 that, whereas the BCNRLP housing supply figures and, by association, policies to restrict the extent of built-up area, are now out-of-date, this does not mean that all policies of BCNRLP must be considered out-of-date but that they should be taken into account according to their "fit" with the Framework.

13. The Secretary of State has gone on to consider carefully the Inspector's findings on the various elements of sustainability: development in the countryside (IR10.19-10.24); Green Gap (IR10.25-10.32); best and most versatile agricultural land (IR10.33-10.34); historic hedgerows (IR10.35-10.39); and accessibility/provision of facilities (IR10.41-10.42). Overall, he agrees with the Inspector's conclusions at IR 10.43 that, for the most part, the appeal scheme is unlikely to be any more harmful to the countryside than any other scheme around the periphery of Crewe and that it would fulfil the social, economic and environmental roles of sustainability as identified in the Framework. However, the Secretary of State also shares the Inspector's reservation (IR10.44) about the extent to which the proposed scheme intrudes into the present Green Gap (see paragraph 17 below).

Five-year housing land supply

14. Having carefully considered the Inspector's analysis of full, objectively assessed housing need (FOAN) at IR10.45-10.64, the requirement for a buffer (IR10.65-10.71) and the Inspector's analysis of the backlog (IR10.72-10.79), the Secretary of State agrees with his conclusion at IR10.63 that, for the time being, it would be reasonable to accept that the FOAN for Cheshire East should be that given in the CELP, with the application of a buffer of 20%. However, the Secretary of State disagrees with the Inspector's approach of including the allowances for each year's backlog in the overall sum to which the buffer should be applied as he sees this as double-counting. He considers that it would be more appropriate to add the figures for the backlog once the figure for each year's need has been adjusted to include the buffer. This would result in a slightly lower total requirement for each year but, nevertheless, one to which he considers that a 20% backlog should be applied.

15. Turning to the Inspector's analysis of housing supply (IR10.80-10.93), the Secretary of State notes that the Council's estimates are inconsistent, and he agrees with the Inspector's conclusion at IR10.91 that the Council's understanding of whether there has been a persistent under-supply is not well founded. He therefore also agrees with the Inspector (IR10.92) that, adopting a 20% buffer, the Council could not demonstrate a 5-year supply of available sites in accordance with the expectations of the Framework and guidance: and he further agrees that the appropriateness of a 5% buffer and of the Council's view of the number of building sites currently available are contentious. However, the Secretary of State also agrees with the Inspector (IR10.93)

that, before deciding whether it is appropriate to allow the appeal, it is also necessary to consider whether the scheme represents sustainable development.

Effect on surrounding road network

16. For the reasons given at IR10.94-10.104, the Secretary of State agrees with the Inspector's conclusion at IR10.105 that, although the proposed scheme would have some negative impacts on the local highway network, the residual cumulative impacts would not be sufficiently severe to justify refusal of planning consent on those grounds.

Prejudice to identification of housing sites and Green Belt extension in emerging CELP

17. Having carefully considered the Inspector's arguments at IR10.106-10.115, the Secretary of State agrees with the Inspector at IR10.116 that the appeal scheme would be acceptable on the proposed site but for the loss of part of the Green Gap that lies between Crewe and Shavington. The Secretary of State acknowledges the Council's view that growth should not overwhelm the independent character of Crewe, including the desirability of maintaining a separate identity for its satellite villages (IR10.117-10.119). The Secretary of State agrees that it remains the case that the CELP Green Belt proposals are the subject of an examination and now subject to further work, so that the principle of an enlarged Green Belt and the extent over which restrictions should apply are far from settled. However, as the Inspector sets out in IR10.121, the Green Belt proposals seek to maintain and carry forward the policy of separation which has been embodied in the Green Gap policy; and he agrees (IR10.120-10.121) that the Green Gap policy has successfully achieved that, with local support, since 2001. Therefore, having taken full account of all the remaining points set out by the Inspector at IR10.122-10.126, the Secretary of State agrees with his conclusion at IR10.127 that allowing this appeal in advance of the resolution of the Green Belt issue through the CELP would undermine the plan-making process.

Planning balance

18. Having carefully considered the Inspector's arguments at IR10.141-10.148, the Secretary of State agrees with him that, as identified at IR10.143-10.144, there are a number of benefits deriving from the scheme as well as other aspects which would not be unacceptable. However, the Secretary of State agrees with the Inspector (IR10.145) that most of these benefits would not be unique to the appeal site and, like the Inspector, he has gone on to weigh them against the arguably premature loss of part of the Green Gap between Crewe and Shavington (IR10.146). Like the Inspector, the Secretary of State acknowledges that the Green Gap has been part of a long established and well-recognised local policy which forms a part of sustainable development (IR10.147). Therefore, while he accepts that the idea of an extended Green Belt around Crewe may be uncertain, he also agrees (IR10.148) that a decision to allow development on the appeal site could reasonably be seen to pre-empt or prejudice the outcome of the Local Plan Examination.

Conditions

19. The Secretary of State has considered the proposed conditions set out in the Appendix to the IR and the Inspector's comments on them at IR9.1-9.13. He is satisfied that the conditions recommended by the Inspector as bring appropriate if he were to grant permission are reasonable and necessary and would meet the tests of

the Framework and the guidance. However, he does not consider that these overcome his reasons for refusing the appeal.

Obligations

20. The Secretary of State has considered the terms of the Planning Agreement and Unilateral Undertaking as described at IR9.14-9.25, and he agrees with the Inspector that, subject to the caveat at IR9.24, these could be regarded as meeting the Framework tests and complying with the CIL Regulations. However, he does not consider that these overcome his reasons for refusing the appeal.

Overall Conclusions

21. Overall the Secretary of State considers that whilst the proposed scheme can be seen as sustainable development providing much needed housing, deferring a commitment to the reduction of an Area of Green Gap in advance of the resolution of that matter through the Local Plan Examination also represents a sustainable approach to development in accordance with the terms of the Framework. Whereas the scheme does have many benefits, the adverse impacts of approving the development resulting in the premature permanent loss of part of this Green Gap area outweighs the presumption in favour of sustainable development that might otherwise pertain.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby dismisses your clients' appeal and refuses planning permission for residential development, retirement/care village, local centre, community building, primary school, public open space, allotments, structural landscaping, access arrangements and demolition of existing structures at land bounded by Gresty Lane, Rope Lane, Crewe Road and the A500 road, Crewe, in accordance with application ref: 13/2874N, dated 12 July 2013.

Right to challenge the decision

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

24. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Geoffrey Hill BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 27 October 2014

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEAL BY

HIMOR GROUP LTD.

Richborough Estates

Inquiry held 22 July – 27 August 2014

Land bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Gresty, Crewe

File Ref: APP/R0660/A/13/2209335

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GLOSSARY OF ABBREVIATIONS AND ACRONYMS

BMV	Best and most versatile agricultural land (ie Grades 1, 2 and 3a)
BCNRLP	Borough of Crewe and Nantwich Replacement Local Plan 2011
dpa	Dwellings per annum
CELP	Cheshire East Local Plan (ie the draft Local Plan)
DCLG	Department for Communities and Local Government
ES	Environmental Statement
FOAN	Full, objective assessment of need
GBSOG	Green Belt and Strategic Open Gaps (as proposed in CELP)
ha	Hectare
HLS	Housing Land Supply
HMP	Housing Market Partnership
LVIA	Landscape Visual Impact Analysis
m	metres
NPPF	National Planning Policy Framework
ONS	Office for National Statistics
para	paragraph
PPG	Planning Practice Guidance
RS	Regional Strategy for the North West
SHLAA	Strategic Housing Land Availability Assessment
TA	Transport Assessment

File Ref: APP/R0660/A/13/2209335

Land bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Gresty, Crewe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by HIMOR Group Ltd., against Cheshire East Council.
- The application Ref 13/2874N is dated 12 July 2013.
- The development proposed is described as “residential development (up to 880 units), retirement / care village (Use Class C1, C2, C3), local centre (Use Classes A1 – A5; D1-D2; B1), community building, primary school, public open space, allotments, structural landscaping, access arrangements and demolition of existing structures”.

Summary of Recommendation: The appeal be dismissed.

1. PROCEDURAL MATTERS

- 1.1 An application for costs was made by HIMOR Group Ltd., against Cheshire East Borough Council. That application is the subject of a separate Report.
- 1.2 The appeal was recovered by the Secretary of State by a direction made under Section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, dated 17 December 2013. The reason for the direction is that the appeal involves a proposal for residential development of over 150 units, or on a site of over 5 hectares, which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.3 The then Parliamentary Under Secretary of State (Planning) – Nick Boles MP – wrote to me on 14 July 2014¹, asking that I give special attention to the evidence put forward by the parties on the five year housing land supply position across Cheshire East.
- 1.4 The application is supported by an Environmental Statement (ES). Responses from statutory consultees are included in the pre-appeal correspondence submitted with the appeal questionnaires and in any subsequent correspondence and the evidence given to the inquiry. This information, together with other evidence submitted to the inquiry, constitutes the environmental information which meets the requirements of the Environmental Impact Assessment Regulations 2011².
- 1.5 No statement of common ground had been concluded between the parties by the time the inquiry opened; either before the 4 week period specified in the

¹ Letter on Appeal file

² Town and Country Planning (Environmental Impact Assessment) Regulations 2011: SI 2011 No.1824

Inquiry Procedure Rules, nor subsequently in the weeks between that date and the opening of the inquiry.

- 1.6 The inquiry was held at the South Cheshire College, Dane Bank Avenue, Crewe. The inquiry opened on 22 July and sittings were held for eight days, with an adjournment on Friday 1 August. The inquiry was adjourned so as to allow time for the parties to conclude two planning obligations made under Section 106 of the Town and Country Planning Act 1990. I made an accompanied visit of the site and its surroundings on 4 August.
- 1.7 The completed planning obligations were submitted by post on 27 August and I was able to close the inquiry in writing on the same day.

2. THE SITE AND SURROUNDINGS

- 2.1 The application site is shown on Plan A.1 (CD 2.3). It comprises some 43.44 hectares (ha) of mainly agricultural land to the south of Crewe. The site is about 1½ miles from the central area of Crewe.
- 2.2 The site is bounded on the north by Gresty Lane, a narrow road of a generally rural character, with well-established hedges across the site frontage. The western side of the site is alongside Rope Lane, and the eastern edges are hedged field boundaries, set back one field from Crewe Road (B5071). To the south, the site is set back from the A500 generally by the width of one field.
- 2.3 The site is mostly flat. Swill Brook runs south-north in a shallow valley across the western part of the site. The site is currently mostly down to agricultural use, either grazing or the growing of a cereal crop. The site is divided by well-established hedges into several fields, with gaps of 3-4 metres (m) in the hedges in places to allow agricultural access between the fields. Across part of the southern edge of the site is a small wooded area or copse. Mature trees stand within the hedges and as individual trees in some of the fields. Brook Farm is the only built development on the site; this is approached by a short, tree-lined drive off Gresty Lane. There are four small – medium sized agricultural barns or implement sheds in front of a bungalow, which is the farm house.
- 2.4 Around the site, adjacent to the north-east corner is a group of commercial or industrial buildings, which accommodate building contractors and a garden and pet centre business. To the west of this is a group of houses or cottages fronting Gresty Lane. Further to the west along Gresty Lane is a bridge over Swill Brook. On the western side on the Rope Lane frontage, protruding into the site is Green Farm, which comprises a group of agricultural buildings and a house. A day nursery business (Rope Green Farm Day Nursery) occupies some of these buildings. Adjacent to the south-east corner of the site is the Alexandra Soccer Centre; a coaching facility for footballing, with covered accommodation and all-weather pitches surrounded by high fences and with floodlighting on columns.
- 2.5 In the immediate surroundings adjacent to the north-west corner of the site, at the junction of Rope Lane and Gresty Lane, is a bridge which carries Rope Lane over the railway line. The bridge is narrow and traffic is controlled to alternate flow working by traffic lights. At this point Rope Lane stands above

- the level of the surrounding land and views can be had down into the site and over land to the north-east and south-west.
- 2.6 Along the western side of Rope Lane opposite the appeal site - from north to south – there is a modern medical centre, a sports or leisure centre, with all-weather pitches, high fences and lighting columns some 12 m high, and Shavington High School – a modern school building. Rope Lane has a semi-urban character along this length, with a relatively straight carriageway between curbs, footways and a signed cycleway, and grassed verges. In the vicinity of the school entrance are lengths of railings (to prevent pedestrians straying onto the carriageway) erected along the edge of the footways and on an island in the centre of the road.
- 2.7 Travelling south, Rope Lane rises up gently on to a bridge over the A500. The A500 is a modern two-lane dual carriageway, acting as a southern by-pass for Crewe. The A 500 is in a cutting at this point, with well-established trees on the sides of the cutting. The A500 continues eastwards, generally parallel to the southern site boundary. For the most part the road is in cutting, except where it crosses the course of Swill Brook, where it is at approximately on the same level as the adjacent land.
- 2.8 The A500 passes under a bridge which carries Crewe Road (B5071) over the dual carriageway. The A500 is in cutting at this point, with trees on the sides of the cutting and adjacent to the bridge. Travelling north along Crewe Road from the bridge is a triangular field on the western side, which lies between the road and the eastern boundary of the appeal site. There is mature hedge some 3 m or so high along this frontage. On the opposite side of Crewe Road is generally continuous built development of mid-20th century housing, with a large public house at the point where Crewe Road meets Gresty Lane and Crewe Road turn to the east.
- 2.9 Parallel to Gresty Lane, a railway line runs east-west, which is in places raised on embankments, notably to cross Swill Brook. North of the railway line is the southern edge of the main built-up area of Crewe, with relatively modern housing estates and an area of railway sidings and workshop buildings.
- 2.10 From the public house noted above, Crewe Road continues east and then turns north to pass under the railway line at Gresty Bridge. Here the B5071 is known as Gresty Road. North of the railway, Gresty Road passes between industrial buildings, railway workshops and houses. About 200 m south of the Nantwich Road (A534) Gresty Road forks off to the right, and the A5020 continues as South Street to meet the Nantwich Road.
- 2.11 Shavington village lies to the south of the A500. Late 20th century housing and bungalows stand on the west side of Rope Lane right up to the bridge over the A500. Land on the east side of Rope Lane is currently being developed for housing. South and east of this development site is the main body of Shavington, which is a substantial village with a range of shops and services and a primary school.
- 2.12 In the wider area, features which are referred to in this appeal include the A534 corridor as it passes east-west through the centre of Crewe. To the east of the Gresty Road junction with Nantwich Road is Crewe railway station,

where the road crosses the railway line on a bridge. The road at this point is known locally as Station Top. To the east of Station Top is a modern roundabout (known as the Crewe Arms Roundabout) which forms a junction with Macon Way, Weston Road and the eastern arm of the A534. To the west of the Gresty Lane junction, Nantwich Road is an urban shopping and commercial street.

- 2.13 East of the appeal site on the north side of the A500 is farmland either side of extensive railway sidings at Basford. This is an area known as Basford West. An access route into this land (the Basford West Spine Road) is currently under construction from a roundabout on the A500. To the east of the sidings is another roundabout on the A500, which has an as yet unused north facing 'tail' into the land adjacent to the railway sidings (Basford East). This will be the junction with the Crewe Green Link Road South. Appendix 1 of Document JT 2(i) is a plan showing main road routes and junctions.

3. PLANNING POLICY

- 3.1 The development plan for the area comprises the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (BCNRLP), which was adopted in 2005 (CD 4.1, Proposals Map Document CEC 21). The Secretary of State's Saving Direction is dated 14 February 2005 (CEC 24). This indicates that the BCNRLP policies for the purposes of this appeal are 'saved' policies. Relevant policies are referred to in this report.
- 3.2 The policies of the National Planning Policy Framework (NPPF) are relevant to read alongside the BCNRLP, as is the advice in the government's Planning Practice Guidance (PPG).
- 3.3 The Council is preparing a replacement for BCNRLP - the Cheshire East Local Plan Strategy (CD 6.1). This replacement local plan was submitted in March 2014 for formal examination. This local plan is referred to in this report as the CELP.

4. THE PROPOSALS AND PUTATIVE REASONS FOR REFUSAL

- 4.1 The planning application is for outline planning permission, with all matters except access reserved for subsequent consideration. The scheme is supported by a Spatial Design Code and illustrative Masterplan and Phasing Plan. The original application plans and supporting documents are listed at the end of this report as Plans A.1–A.8
- 4.2 The illustrative plans were revised after the application had been made to Cheshire East Council – as detailed in the covering letter to The Planning Inspectorate of 12 May 2014 (CD 3.1). At the inquiry the revised documents were accepted as the revisions would not materially affect the interests of relevant landowners or other interested persons.
- 4.3 The plans and supporting design code which form the subject of the application are Plan A.1 (Site Location Plan), Plan A.2 (Application Site Plan), Plan A.9 (Outline Parameters Plan Rev E), Plan A.10 (Rope Lane Access and Traffic Calming General Arrangement Rev A), Plan A.11 (Crewe Road Access

General Arrangement RSA Amendments) supported by Plan A.12 (Illustrative Masterplan Rev D) and A.13 (Spatial Design Code May 2014). All application plans are found amongst the Core Documents – as noted in the List of Plans appended to this Report.

- 4.4 The Illustrative Masterplan (Plan A.12) shows an access point on Crewe Road close to the Alexandra Soccer Centre and a second access point on Rope Lane, north of Green Farm. A spine road runs through the site, between the two access points. Up to 880 houses are proposed arranged around squares and residential roads off the spine road. Small parks, greens and playing fields are shown adjacent to, or amongst, the residential areas. A primary school and associated playing fields are shown in the south-western corner of the site, and a community hall, public house and retail centre are shown in the north-west corner of the site. The area of woodland along part of the southern boundary of the site is shown to be retained, as is much of the present network of hedgerows. An area either side of Swill Brook as it runs across the site is shown to be kept free of built development.
- 4.5 The appeal is against the Council's failure to issue a decision on the application within the prescribed period. However, the Council resolved that, had it been able to determine the application, it would have been refused for the following reasons:
- 1 *The proposed residential development is unsustainable because it is located within the Open Countryside, where according to Policies NE.2 and RES.5 of the adopted Borough of Crewe and Nantwich Replacement Local Plan there is a presumption against new residential development. Such development would be harmful to its open character and appearance, which in the absence of a need for the development should be protected for its own sake. The Local Planning Authority can demonstrate a 5 year supply of housing land supply in accordance with the National Planning Policy Framework. Consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan.*
 - 2 *The proposal would result in loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of 5 years, the applicant has failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is unsustainable and contrary to Policy NE.12 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the provisions of the National Planning Policy Framework*
 - 3 *The proposal is located within the Green Gap and would result in erosion of the physical gaps between built up areas as well as adversely affecting the visual character of the landscape, and given that there are other alternatives sites, which could be used to meet the Council's housing land supply requirements, the proposal is considered to be contrary to Policy NE.4 of the Borough of Crewe and Nantwich Replacement Local Plan, the National Planning Policy Framework and the emerging Core Strategy.*
 - 4 *The proposal would involve the removal of an "important" hedgerow as defined in the Hedgerow Regulations 1997. Policy NE5 of the local plan states that the Local Planning authority will protect, conserve and enhance the natural conservation resource where, inter alia, natural features such as hedgerows are, wherever possible, integrated into landscaping schemes on*

development sites. In the absence of overriding reasons for allowing the development and the proposal is therefore contrary to Policy NR3 of the adopted Borough of Crewe and Nantwich Replacement Local Plan 2011.

- 5 *The proposed development would not represent economically and socially sustainable development as there is no identified local need for the care provision. There is already an over-supply of such care provision in the locality which exceeds the needs for the current and future generations. The development would therefore be considered contrary to NPPF paras 7, 17 and 50.*
 - 6 *The applicant has failed to demonstrated a safe and satisfactory means of access to the site, contrary to the provisions of Policy BE3 (Access) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the National Planning Policy Framework.*
 - 7 *The Transport Assessment submitted with the application under-estimates the likely traffic impact of the development, which in the opinion of the Local Planning Authority would have a severe residual impact on the local road network, contrary to paragraph 32 of the National Planning Policy Framework.*
 - 8 *Due to its scale the proposed development would impact on a wide area and is considered to be so substantial, and significant, that granting permission could prejudice the emerging Local Plan by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the Plan. It is also located in an Area of Search for proposed Green Belt in the emerging Local Plan and would predetermining decisions in respect of that policy. It is therefore contrary to advice contained within the National Planning Policy Framework and The Planning System: General Principles.*
- 4.6 Prior to the inquiry, the Council accepted that not all of its putative reasons for refusal could be maintained and agreed that two of these - Reasons 5 and 6 - should be withdrawn (see Document CEC 7).

5. THE CASE FOR CHESHIRE EAST BOROUGH COUNCIL

The appeal site

- 5.1 Forty-three hectares is a large area of land. The site lies in open countryside beyond the settlement boundary of Crewe, to the north of the Crewe-Nantwich railway which itself lies to the north of Gresty Lane. The site is in productive agricultural use, for both arable and livestock farming. It has a very good network of hedgerows and a significant number of mature trees. The site contains 'important' hedgerows protected by the Hedgerow Regulations.
- 5.2 The site shares key characteristics identified in the National Character Assessment, Cheshire Landscape Character Area and the Lower Farms and Woodlands Landscape Character Type within LWF: 7 Barthomley Character Area. Those characteristics are: gently undulating land, fields with hedged boundaries and occasional hedgerow trees.

The emerging Local Plan Strategy

- 5.3 The Examination of the CELP is scheduled to begin its hearings on 16 September 2014. This follows extensive public consultation on various iterations of options, alternative strategies, and range of potential sites. The appeal site has never been a preferred option in any of the consultation stages.

Whether the proposed scheme could be regarded as sustainable development

- 5.4 The Council takes the view that the proposed development would not represent a sustainable form of development when tested against the saved policies of the Local Plan as a whole or the NPPF as a whole. BCNRLP already expressly embraced the principles of sustainable development (referred to as "prosperity", "quality of environment" and "quality of life"³), now referred to in the NPPF as the "three dimensions" of sustainability (respectively, economic, environmental, social).⁴
- 5.5 The saved policies support housing development within settlements. But they do restrict development in the open countryside, and do seek to prevent it in the Green Gap where the proposed built development and/or change of use of land would erode the Gap or adversely affect the visual character of the landscape, unless there is no alternative. Further they do restrict it on 'best and most versatile' agricultural land where there are alternative locations of lower quality.
- 5.6 Paragraph 215 of NPPF advises that, in respect of development plan policy in the circumstances pertaining in this case, "due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."
- 5.7 The objective of protecting the character and amenity of the open countryside, which underpins BCNRLP Policy NE.2 is consistent with one of the core planning principles of NPPF⁵. The appeal site lies within the Green Gap identified in BCNRLP Policy NE.4. The Green Gap policy is also consistent with the NPPF which acknowledges different roles of different areas, supporting communities within rural area⁶, the adopted plan provides "clear policies on what will or will not be permitted and where"⁷, and identifies "land where development would be inappropriate"⁸. BCNRLP Policy NE.12 is consistent with paragraph 112 of the NPPF and the PPG (Natural Environment).

³ CD 4.1 paragraphs 2.3 and 2.4

⁴ Paragraph 1.11

⁵ NPPF Paragraph 17, bullet point 5

⁶ NPPF paragraph 17

⁷ NPPF paragraph 154

⁸ NPPF paragraph 157

- 5.8 The proposed housing development, albeit not economic development itself, will support economic growth and provide affordable housing in a location which is accessible to the services and facilities of Crewe. However, the existence of a 5 year supply of deliverable housing, and the existence of alternative sites outside of the Green Gap, means that there is no need to permit development in the open countryside or on best and most versatile agricultural land, let alone in the Green Gap.
- 5.9 NPPF advises that Local Plans should “identify land where development would be inappropriate”⁹ – which the Council has consistently done in respect of Green Gap policy. NPPF also advises that the exceptional circumstances required to justify the extension of the North Staffordshire Green Belt to the south of Crewe may be demonstrated, for example, where “normal planning and development management policies would not be adequate”¹⁰. Here there is an overlap with the purpose of Green Gap policy. The fact that development pressure persists, indeed is occasionally successful (e.g. the site in Rope Lane allowed on appeal) shows that Green Belt policy is needed to emphasise that the proposed development of the appeal site is wholly inappropriate.
- 5.10 A Green Belt would help to check what would otherwise result in the unrestricted sprawl of Crewe, preventing merger of Crewe and Nantwich and Crewe and Shavington, as well as safeguarding the countryside from encroachment¹¹. Both the Green Gap and a proposed Area of Search for Green Belt are supported by independent consultants Envision; their report forms part of the evidence base of the CELP. This is all to be tested through the Local Plan examination process, but none of the foregoing suggests that the proposed development constitutes sustainable development. Moreover, the prematurity of this appeal cuts directly across advice in the PPG.
- 5.11 The highways impact would also be severe, contrary to para 32 of the NPPF. Ironically, the impact of the proposed development on top of nearby allocated Basford East - an important part of the justification for government funding of the Crewe Green Link Road - has not been assessed in detail in the Transport Assessment (TA).
- 5.12 Looking at the development plan as a whole and the NPPF as a whole, the proposed development is not considered to constitute sustainable development.
- 5.13 Turning now to the relationship between sustainable development and paragraph 14 of the NPPF. Paragraph 6 of the NPPF states that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development means in practice for the planning system.
- 5.14 In William Davis Ltd v. SSCLG¹² Lang J accepted Treasury Counsel’s submission on behalf of the Secretary of State and concluded that

⁹ NPPF paragraph 157

¹⁰ NPPF Paragraph 82

¹¹ NPPF Paragraph 80

¹² [2013] EWHC 3058 (Admin) 11th October 2013

"[i]t would be contrary to the fundamental principles of [the] NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development."

Permission to appeal to the Court of Appeal was refused by Sullivan LJ on 24 February 2014. It was not stated by the learned judge that Lang J's finding and interpretation of paragraph 14, as recorded above, was incorrect. Contrast the position in Hunston where Sullivan LJ granted permission to appeal, not because he thought that the appeal had real prospects of success but because important issues of interpretation of paragraph 47 of the NPPF were involved. Paragraph 14 is of course of importance to decision-making.

- 5.15 For the appellant, a number of High Court decisions were referred to, but none expressly dealt with the point before the Court, and decided, in Davis.
- 5.16 The decision of Patterson J (Dartford) became available at the inquiry on 30 July. The decision had been noted in the Droitwich decision but it appears that the judgment had not been formally published until 30 July. Patterson J, whilst rejecting the elevation of the *dicta* in Davis to a formulaic approach, said:

"I agree with Lang J in her conclusion that it would be contrary to the fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development."

- 5.17 Thus it is still necessary to consider whether development is sustainable. It may be noted that Treasury Counsel submitted that

"sustainable development is about seeking an overall net positive contribution to economic, social and environmental gains together."

An overall net positive contribution involves a weighing of harm and benefit rather than a paragraph 14 test (significantly outweigh). Whatever the precise test is, the proposal is not considered to be sustainable development whichever test is applied, for the reasons set out above and in Mr Haywood's evidence.

- 5.18 Those reasons include the fact that the site is located within a Green Gap. Lindblom J observed in Bloor¹³ that:

"On any sensible view, if the development would harm the Green wedge by damaging its character and appearance or its function in separating the villages of Groby and Ratby, or by spoiling its amenity for people walking on public footpaths nearby, it would not be sustainable development within the wide scope drawn for that concept in paragraphs 18 to 219 of the NPPF."

- 5.19 Turning now to the particular sub-topics identified:

Green Gap

- 5.20 The appellant contends that no adverse view was expressed by the Local Plan Inspector in 2003¹⁴ so far as concerns the appeal proposal. The Inspector

¹³ CD 10.7

¹⁴ CD 4.4

- simply left detailed boundaries and adequacy of separation to another day when housing need required such issues to be considered. A proper reading of the report shows that these are mistaken contentions. The Inspector was reviewing Green Gap Policy (as he noted at p.182, para 115.2.3). The conclusions of that review are set out in chapter 14 of the report (pp 13 and ff).
- 5.21 The objections to the Green Gap policy fell into 3 main categories: (1) extend the area of Green Gap (2) objection to principle of Green Gap policy (3) exclude specific areas (see p.14 para 14.2.1). The justification for the policy and the extent of the Green Gap is set out in paragraphs 14.2.2 – 6.
- 5.22 It was noted that the post-war growth of Crewe had engulfed small villages (14.2.2). There was still a visible openness between the two towns but action was necessary to prevent the erosion of the gap. The Council was right to seek a tighter level of control than that afforded by open countryside policies, but instead of requiring “very special circumstances” to be shown to justify a breach of policy, the wording was changed to be “no loss of Green Gap land except for necessary development which cannot be located elsewhere” (page 3, para 2.3, final Recommendation).
- 5.23 The Council was right, the Inspector said, not to look in detail at “the edges of the built-up areas” i.e. to include land up to the settlement boundary – those edges should not be allowed to be “nibbled away” otherwise the edges would soon lead to the gap being eroded cumulatively. If there were a specific need to consider the detailed edge along the settlement – if there were a housing need – then the detailed edge could be looked at in the context of ensuring that an adequate separation remained. (14.2.5). He was satisfied that the general extent of the Green Gap had been correctly identified in the vicinity of (*inter alia*) Green Farm, Rope Lane (14.2.6).
- 5.24 He recommended the following addition to the reasoned justification:
- “the building of principal traffic routes through the narrow gaps between the settlements has the potential to increase pressure for new development up to and along these routes. That pressure is already manifest in the Green Gaps, justifying a stricter level of development control to ensure continuing separation of the settlements.”*
- 5.25 The appeal site constitutes far more than a “nibble”: far more than a small amount of development on the edge of the settlement boundary. The appeal site, which comes up to the A500 near Rope Lane, would plainly have been inconsistent with all of the above and would not have been considered acceptable.
- 5.26 The Inspector returned to the issue of Green Gap when addressing objection sites for housing. Specifically with regard to the part of the Green Gap with which this appeal is now concerned (limiting this area further to between Rope Lane and Crewe Road) the Inspector commented (para 115.2.3 on page 182) that “virtually every single piece of open land either side of the A500 bypass is the subject of objection”. The Inspector recommended that no modification be made to the Plan:

"... I believe the Green gap Policy (NE.4) to be a most important part of the Council's strategy, and I agree with the Council that the site is within one of the more sensitive areas of Green Gap between Shavington and Crewe. The proposal to include the land as a residential allocation would, in my view, result in a significant intrusion into the open countryside between the two settlements. It is also an area under intense pressure for development ... I do not accept that other areas of Green gap are not contained to the extent that this site is ... (p.172 para 106.2.2)

5.27 The Local Plan Inquiry Inspector clearly did not think that the A500 would provide adequate separation. He also clearly took the view that a 6 ha site (compared to the current appeal site of 43 ha) would be a significant intrusion into open countryside even though a contained site.

5.28 Other sites in this vicinity were also considered at the Local Plan Inquiry. One was a site of nearly 8 ha on the northern edge of Shavington for approximately 230 dwellings (p.180 para 114.2.2). There were views across the site from several viewpoints, including part of an established employment area:

114.2.3 "I consider that sites within the Green Gap should only be considered if land cannot be found elsewhere to meet the CRSP housing requirement"

He went on to consider the effect of development on the Green Gap.

"If this were to be permitted, there is little to prevent further pressure, leading to the whole area up to the A500 being built over. This is precisely why the Green Gap Policy is, in my view, an essential component of the Plan's strategy. For these reasons I do not support the allocation of this site for residential development." (114.2.4).

5.29 Another site was land to rear of 187A Crewe Road, Shavington. This was part of the larger objection site above (see 115.2.1). Part of that site already had planning permission for residential development. Here the Inspector supported Green Gap policy (115.2.2):

"development should not compromise the separate identity of villages to the south of Crewe town, and I am particularly concerned that there is considerable pressure between Shavington and Crewe ..." (ibid)

"[T]he recent opening of the A500 bypass ... will increase pressure in the vicinity of its junction with the Crewe Road. That much is clear from the fact that virtually every single piece of open land either side of the A500 bypass is the subject of objection ...it is my conclusion that this part of the Green Gap is particularly fragile, and vulnerable to development pressures.... (115.2.3)

"The objectors argue that the site is not readily visible ... This is true ... However, this is not in itself a reason for recommending a residential allocation in this vulnerable location. It could lead to further development pressure on adjacent land, leading ultimately to the A500 bypass forming the northern limit to Shavington. This would not accord with the general thrust of policy at local and structure plan level, which seeks to maintain the separate identity of Shavington."

5.30 That is, the conclusion that inappropriateness of release from the Green Gap was separate from, and irrespective of, housing need; the A500 bypass was considered to be an entirely inappropriate separation and would not maintain the separate identity of Shavington.

- 5.31 For the appellant at this inquiry, reference was made to two objection sites considered by the Local Plan Inquiry Inspector at Sydney Road¹⁵ and Land north of Crewe Green roundabout¹⁶ on the Haslington side of Crewe. The Council contend that these areas of land are not directly comparable to the land between Crewe and Shavington.
- 5.32 It is important to note that Green Gap policy has a separate function to that of countryside protection policy; namely, the maintenance of the separation of Crewe from nearby villages and Nantwich, and thus the openness of the gaps between. This function has been supported by the previous Local Plan Inspector, and particularly with reference to the part of the Green Gap with which this inquiry is concerned (i.e. Crewe/Shavington). As already mentioned, where there is erosion of this Gap and/or harm to the visual character of the landscape, the policy is that exceptions should only be made where it can be demonstrated that no suitable alternative location is available. Although there may be the need to accommodate further housing outside settlement boundaries, this does not mean that it must be permitted on this Green Gap site. Other sites exist; CELP shows that there are many alternative locations outside the Green Gap.
- 5.33 In the very recent Hunters Lodge Hotel appeal decision¹⁷ (in the Haslington Green Gap) the Inspector found the openness and undeveloped character of the area to be visually important and of a distinct physical area even though not of exceptional landscape quality in its own right.¹⁸ Further,
- “even though the actual percentage reduction in the distance of the edge of the built up area of Crewe to that of Haslington may not be high, I conclude that the physical form of the development would make the open area materially narrower and would add to coalescence.”*¹⁹
- 5.34 The Inspector noted the Council was proposing to permit development on two sites in the Green Gap but he observed that this was part of work taken within a plan-led process, and that the appellant had not put forward a case that there was no suitable alternative location available.²⁰
- 5.35 It is not correct to accept that Policy NE.4 should be regarded as out-of-date if NE.2 is out-of-date. This is not only because of NE.4’s separate function but because Policy NE.4 is not a “housing supply policy” within the meaning of paragraph 49 of the NPPF.²¹ At the 2003 Local Plan Inquiry objection sites for housing were rejected on freestanding Green Gap grounds. The Davis²² and Barwood²³ cases now show that it was also incorrect to characterise this

¹⁵ CD 4.4 page 173 and ff

¹⁶ CD 4.4 page 208 and ff

¹⁷ CEC 22. Note that this site is shown on HG 7 (plans of comparison sites)

¹⁸ p.5 para 23

¹⁹ Para 24

²⁰ Para 26

²¹ BH 2 Appendix 6: Barwood (Ouseley J) and Appendix 7: Davis (Lang J)

²² BH 2 Appendix 7, para 47

²³ BH 2 Appendix 6, para 47

Green Gap policy as a housing supply policy in the context of para 49 of the NPPF and the then agreed lack of a 5 year supply (para 6).

- 5.36 The appellant seeks to rely upon the decision letter in Mountsorrel²⁴ to argue that, since the Area of Local Separation policy in that case was considered to be a policy for the supply of housing, then the Green Gap policy in this case should likewise be considered. There are two important points to make concerning that decision. First, the point made by the Inspector in that report, and accepted by the Secretary of State, was that the particular policy represented “an absolute ban on open market housing in the ALS”²⁵. NE.4 clearly allows for exceptions.
- 5.37 Secondly, and related to the first point, the Inspector was referred to Colman,²⁶ but Bloor²⁷ had not been decided at that point (and there is no reference in the Secretary of State’s subsequent decision letter to suggest that he was aware of it when the decision letter was issued only a few weeks later). Here Policy NE.4 does permit countervailing benefits to be weighed (so too does NE.2). Lindblom J, in Bloor puts the Colman dicta in their proper context. It is submitted that the Mountsorrel decision does not support the appellant’s case here.
- 5.38 Development of the appeal site would leave only a sliver of undeveloped land between the appeal site and the houses on, and to be built on, Rope Lane. In effect only the A500 would separate Crewe from Shavington at this point. No one suggests that the A500 would provide an adequate Green Gap. It is difficult to see how this could, by contrast, justify a Green Belt designation in the remainder of the area between Crewe and Shavington. A permission now would inevitably preclude the land being included in the Area of Search for Green Belt.
- 5.39 The vulnerability of this part of the Green Gap is very evident. The arguments the appellant has presented to the inquiry were rejected by the Local Plan Inspector in 2003, and the vulnerability to which that Inspector referred has not lessened. It would be a serious mistake – and one for which future generations would rightly condemn us - to allow a huge ‘bite’ to be taken out of this vulnerable part of the Green Gap. Wistason and Rope now read as part of Crewe; the appeal scheme would effectively join Crewe and Shavington.
- 5.40 The alleged absence of housing land supply should make no difference to the application of Green Gap policy to the appeal site. Green Gap policy is that exceptions should only be made where there is no alternative. It was not suggested that areas outside the Green Gap did not exist which could accommodate 880 dwellings (or any part thereof). Plainly the Green Gap comprises a relatively small part of land which lies beyond the settlement boundary of Crewe (let alone other settlement boundaries).

²⁴ CD 9.15

²⁵ p42, para 8.19

²⁶ CD 10.8 para 22

²⁷ CD 10.7 para 186

Loss of open countryside

- 5.41 BCNRLP Policy NE.2 treats all land outside settlement boundaries as open countryside and permits only restricted categories of development in the open countryside. RES.5 similarly restricts housing development in the open countryside. There is common ground that the proposed development would be in breach of these policies.
- 5.42 The objective of protecting the character and amenity of the open countryside is consistent with one of the core planning principles of NPPF (paragraph 17, bullet point 5); and this consistency has been recognised both in respect of BCNRLP policies and similar Congleton Borough policies in numerous decision letters in the past 2 years.²⁸ The environmental objective does not cease simply because Policy RES.1 makes housing provision only for the period 1996-2011. There is no suggestion, either, that there has been any material physical change to the site since adoption of the Plan in 2005.
- 5.43 This site is not “open countryside” on a purely policy basis i.e. just because it lies outside the settlement boundary. It is, in large part, physically and aesthetically part of the open countryside.
- 5.44 The landscape witnesses at this inquiry differed as to the extent of the influence of Crewe on the appeal site. There is also a difference in view as to the extent to which, for example, development along Rope Lane has suburbanised the appeal site or this part of the Green Gap. Even if the view were taken that a “tipping point” has been reached, it hardly assists the appellants’ case to argue that the development of the appeal site tips that balance.
- 5.45 It is appropriate to consider the landscape and visual impacts of the proposed scheme. The development would have a significant adverse impact on a localised area of the much wider LWF 7 Character Area. The principle that this can justify a reason for refusal is demonstrated by the Sandbach Road North, Alsager decision letter²⁹. That decision also confirms that the fact that a site does not have a formal landscape designation does not mean that planning permission cannot be refused on landscape grounds. In this appeal the Green Gap policy, by reference to the criterion/test of adverse harm to the visual character of the landscape, includes this as an additional issue (where otherwise there is no other relevant landscape policy). The Landscape Visual Impact Analysis accepted that the designation as Green Gap increased the sensitivity of the landscape to development.³⁰ Openness is key feature and characteristic of the Green Gap.

²⁸ BH 1 and BH 2: Loachbrook Farm, Congleton (2012) para 9 (Appendix 7); Congleton Road, Sandbach (2013) para 15 (Appendix 8); Sandbach Road North, Alsager (2013) para 16 (Appendix 9); Hassall Road, Alsager (2013) para 11 (Appendix 10); Crewe Road, Crewe (2014) para 18 (Appendix 11); The Moorings, Congleton (2014) paras 27-28 (Appendix 12); Rose Cottages, Brereton Heath (2014) para 9 (Appendix 13); Elworth Hall Farm, Elworth, Sandbach (2014) para 11 (Appendix 16). See now, too, Dunnocksfold Road, Alsager decision (14 July 2014) paras 18 and 30; 144 Audlem Road, Nantwich (25 July 2014) para 19; Close Lane, Alsager (29 July 2014) para 12.

²⁹ CD 9.4

³⁰ CD 2.10 page 11-23, para 11.88

- 5.46 There is common ground that the visual envelope of the site is relatively restricted: this necessarily increases the impact of the proposed development on that visual envelope, particularly where such a large proportion of the appeal site would be developed (and/or perceived to be developed). The appeal scheme would change arable and animal farming in the open countryside to a 'garden suburb' with housing, school (including its car parking, fenced grounds, lighting etc.), main distributor and other residential roads and pavements, retail shops, public house, allotments and their associated paraphernalia. This would be a significant change to the existing local landscape character.
- 5.47 It is acknowledged that there is some development on and around the site, for example on the west side of Rope Lane, but the proposed development will suburbanise this road further. If it is considered that a tipping point has been reached then that is a reason why permission should not be granted.
- 5.48 It is not correct to believe that the visual impact of the scheme would be limited. Views across the area would not be just hedgerows with the perception of openness beyond, but there would also be significant stretches with clear views of the developed area across the appeal site³¹; the view from either would substantially (and adversely) change. The significance of the degree of change would be "high", rather than "medium" as claimed for the appellants. Similar points apply to Photo viewpoints 2, 3 and 4.
- 5.49 The site would also be seen from Crewe Road. The appeal scheme would leave an undeveloped parcel of land between Crewe Road and the appeal site. The hedgerow along this frontage has for the last few years been left unmanaged. This currently creates a more substantial screen for views towards the appeal site, but previously the hedge has been trimmed to a lower height (see the Google Streetscene view produced by Mr Gomulski³²). Moreover, if the appeal site were granted permission there would be little purpose in the continued Green Gap designation on this area of land (only an east-west rather than north-south axis remaining).
- 5.50 There would be impacts of substantial/moderate significance and those impacts have been understated by the appellants. BCNRLP Policy NE.4 requires that development should be refused where there would be adverse harm unless there is no suitable alternative. It is common ground that there would be adverse harm and the appellants has not suggested that there were insufficient non-Green Gap sites such that it was necessary to accommodate 880 or any part thereof on this Green Gap site.

Best and most versatile agricultural land

- 5.51 The proposal would also involve the significant loss of 'best and most versatile' agricultural land (BMV), contrary to BCNRLP Policy NE.12, which is consistent with both the NPPF³³ and the PPG.³⁴ That is, land within

³¹ Mr Gomulski's Viewpoint 1: Appendix 2 to JG 2.

³² JG 2 Appendix 2, final page

³³ Para 112

³⁴ 8-026

agricultural land classification categories 2 and 3a. The appellant has not shown that there are no other sites of lesser agricultural quality or otherwise as required by Policy NE.12 and NPPF paragraph 112. It was accepted at the inquiry that land adjacent to the northern / north eastern quadrant of Crewe would be considered to be inferior in quality. The ES considered the loss of 12.5 ha BMV to be of medium significance,³⁵ although that is on an assumption that 20 ha would be of high significance. The NPPF/PPG provide no guidance on this point.

- 5.52 38.7 ha of this land is farmed, and wheat is grown on the Grade 3b land. The fact that there are a number of tenants (and that the principal occupation of the occupant of some 24 ha is drainage work) does not in any way alter the fact that the land is in productive use, even though it is not all 3a or 2.
- 5.53 This putative reason for refusal is pursued on the basis that there is a 5 year supply of housing. If there is not such a supply it remains a material consideration to be weighed in the balance with other harms. The Council is prepared to weigh agricultural land value against wider needs, but here there is no such countervailing need to lose this Green Gap land from agriculture.

Loss of important hedgerows

- 5.54 There are important hedgerows running across the site. The importance derives from two separate bases, and not on the single basis (parish boundary) identified and assessed in the ES. One of the hedgerows on the appeal site marks the boundary between pre-1850 parishes or Townships. Other hedgerows are recorded on the Tithe Map 1839-40³⁶ as an integral part of a field system. These are 'important' within the meaning of the Hedgerow Regulations 1997, as the hedgerows have been in existence for 30 or more years. The fields form part of what the former Cheshire County Council's Historic Landscape Characterisation Assessment described as ancient or post-mediaeval fieldscapes.³⁷ Because the ES only assessed the parish boundary hedgerow it is considered that the impacts on important hedgerows are understated and are significant, such that their loss would be contrary to BCNRLP Policy BE 16 (man-made archaeology) and the reasoned justification to Policy NE.5 (landscape features).
- 5.55 It was accepted that that there would be some 17-18 breaches of the important hedgerows (of which 4 related to the parish boundary), with lengths varying between about 5m up to (in one instance) 20 m. Document HG 22 shows the extent of important hedgerow would need to be removed: over half a kilometre (520 m) of hedgerow comprising 34 breaches of the important hedgerows, even on an indicative plan which does not appear to show 880 dwellings.
- 5.56 These hedgerows have historical and to some extent archaeological interest (it is agreed that the distinction is necessarily blurred). The hedgerows have some communal and aesthetic interest. The fieldscape in large part dates

³⁵ CD 2.10 Chapter 16, p.16-13 para 16.47

³⁶ Environmental Statement Appendix 12, Figure 12.11

³⁷ *Ibid*, Figure 12.2

back to 16th century. Although this may not be unique to the site, this does not undermine their importance within the Regulations. Whilst reference was also made to guidance for good management³⁸, this guidance is predicated upon satisfaction first of the Hedgerow Regulations: "in addition to any statutory controls". Thus future management does not justify their loss.

Whether there is a 5 year housing land supply

5.57 The Council believe that there is a 5 year housing land supply. Paragraph 49 of the NPPF advises that:

"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

5.58 It follows that, if a 5 year supply can be demonstrated, paragraph 49 does not require relevant policies for the supply of housing to be considered not up-to-date.

5.59 The relevant part of paragraph 14 of the NPPF for the purpose of this appeal is:

"where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; ..."*

5.60 Lindblom J in Bloor Homes³⁹ gave guidance on the interpretation of the meaning of the words "absent" and "silent" in this context. The development plan is plainly not absent; the saved policies of the CNBP are extant.

5.61 The development plan is not silent either in the sense that it "contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle". It provides, for example, that housing development should generally take place within settlement boundaries and not in the open countryside beyond settlement boundaries and not in the Green Gap (see test in BCNRLP Policy NE.4).

5.62 Relevant policies are not out-of-date; for example the Green Gap policy. This is not changed by the fact that policy RES.1 does not make specific provision for housing post 2011. There is disagreement as to whether "relevant policies" means 'all' or 'any'.

5.63 There are potentially 3 ways in which a policy could be out-of-date. (i) It could be time-expired, having an end date - but Policy NE.2 has no end date. Countryside protection continues. (ii) If the policy were not consistent with the NPPF – here policy NE.2 has consistently been held to be consistent with

³⁸ CD 6.11, page 89

³⁹ CD 10.7 - [2014] EWHC 754 (Admin) (19 March 2014) para 45 and ff

the NPPF (paragraph 17 bullet point 5). (iii) If there were no 5 year supply and the policy were a housing supply policy (paragraph 49) – here the Council is of the view that there is a 5 year supply so paragraph 49 is not engaged.

5.64 Even if it were engaged, NE.2 is a housing supply policy “to the extent that”, to use the phrasing both of Lewis J in Cotswold⁴⁰, of Lindblom J in Bloor (2014) and the wording of the background document supporting the consent to judgment in the Sandbach Road North, Alsager case⁴¹, it sought to restrict the supply of housing, although Ouseley J in Barwood⁴² expresses the position more broadly.

5.65 In Cotswold Lewis J. (27/11/13) referred to (para 16) Policy 19 of the Local Plan. That restricted development, including housing development, outside existing development boundaries.

(para 72) “Thirdly, the Secretary of State did not err in disregarding Local Plan Policy 19. The second sentence of paragraph 49 of the Framework says that relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply. Miss Sheikh submits that Local Plan 19 restricts development, including housing development, and so is not a housing policy for the purposes of paragraph 49 of the Framework. The short answer is that Local Plan Policy 19 is a policy relating to the supply of housing (amongst other developments). It restricts development, including housing, development. As the inspector correctly held, applying the Framework, Local Plan Policy 19 should be disapplied “to the extent” that it “seeks to restrict the supply of housing”: see paragraph 14.44 of the report in the Highfields appeal”.

5.66 It is acknowledged that if there is no 5 year supply, BCNRLP Policies NE.2 and RES.5 are out-of-date but only in terms of their geographical extent. But for Policy NE.4 the position is markedly different. In William Davis Ltd v. SSCLG and North West Leicestershire Council⁴³ (11/10/13) (Lang J) said:

“52. Central to this Inquiry is saved policy E20, Green Wedge, which states that “Development will not be permitted which would adversely affect or diminish the present open and undeveloped character of the Coalville-Whitwick-Swannington Green Wedge, (identified on the Proposals Map. Appropriate uses in the Green Wedge are agriculture, forestry, minerals extraction and outdoor sport and recreation uses. Any built development permitted within the Green Wedge will be limited to minor structures and facilities which are strictly ancillary to the use of the land for these purposes. [underlining added]

47. [Note – this is the order of the numbered paragraphs as they appear in the judgment]

The Claimants sought to argue that Policy E20 should have been treated as one of the “[r]elevant policies for the supply of housing” within the meaning of NPPF, paragraph 49 because the restriction on development potentially affects housing development. I do not consider that this is a correct interpretation of paragraph 49. Paragraph 49 is located in the section of the NPPF dedicated to housing and it

⁴⁰ CD 10.5 - [2013] EWHC 3719 (Admin) (27 November 2013)

⁴¹ CD 9.4

⁴² CD 10.3 - [2014] EOHHC 573 (Admin) (10 March 2014)

⁴³ High Court challenge to Secretary of State’s Decision on Appeal Ref: APP/G2435/A/11/2158154

refers to policies for "the supply of housing", of which there are many in local, regional and national plans. It was agreed that the housing policies in the Development Plan in this case, were out-of-date by virtue of paragraph 49 (see the DL, paragraph 22). However Policy E20 does not relate to the supply of housing, and therefore is not covered by paragraph 49. I was shown numerous Inspectors' decisions in which paragraph 49 had been applied but these were distinguishable from this case because the policies related specifically to housing. There were a couple of exceptions, but insofar as Inspectors have applied paragraph 49 to policies which did not relate to housing, I respectfully suggest that they did so in error. In my view the implementation provisions in Annex 1 govern policies which are not specifically related to housing, not paragraph 49."

- 5.67 In South Northamptonshire v. Barwood Land (10th March 2014)⁴⁴ Ouseley J. was concerned with Policy EV2 which stated:

"planning permission will not be granted for development in the open countryside ..." (exceptions did not include residential development) (para 38)

- 5.68 The judge at paragraph 47 contrasted "such very general policies", which he concluded were housing supply policies (without any qualification such as "to the extent that")

"designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development." (underlining added)

- 5.69 Consistently with both Davis and, now, Barwood, the Green Gap in the present case clearly as a matter of law and judgment must fall within the category of not being a "policy for the supply of housing" within paragraph 49 of the NPPF. Irrespective of countryside policy NE.2, the need to keep Crewe and Shavington separate stands. As contended above (paragraph 5.35) Policy NE.4 is not a policy for the supply of housing.

- 5.70 Even if paragraph 14 applies (on whatever basis) in this case the adverse impacts are considered significantly and demonstrably to outweigh the benefits and, on the same or lesser test, the proposal is considered to be unsustainable development.

5 year supply - summary of events

- 5.71 The issue of a 5 year supply has loomed large in Cheshire East at inquiries over the last 12 months, following the publication in March 2013 of the Council's SHLAA (the base date of which was 31 March 2012).

- 5.72 In October 2013 Inspector Mr Major⁴⁵ in two decisions took the view that a 5 year supply had not been demonstrated (on the basis of 1,150 dpa base requirement and post Hunston High Court decision⁴⁶, and the need for an additional requirement of a 20% buffer) and allowed one appeal⁴⁷ and

⁴⁴ CD 10.3

⁴⁵ Decisions in respect of Congleton Road, Sandbach (CD 9.3) and Sandbach Road North, Alsager.

⁴⁶ See e.g. CD 9.3 page 4 footnote 2;

⁴⁷ Now by consent agreed to be quashed

dismissed the other. It is interesting to note that a number of sites which he did not think appropriate to include in the 5 year supply are in fact coming forward as predicted.⁴⁸ Little particularity was given and this gave rise to difficulties for all parties. The Secretary of State in respect of the Abbey Road site in Sandbach also issued a decision letter in October 2013⁴⁹, having redetermined a previously quashed decision following written representations (only). He ultimately expressed the requirement as a range, lying somewhere between a 5% and 20% buffer but again did not address sites in any detail.

- 5.73 The Council therefore properly and reasonably decided to reconsider its Housing Land Supply (HLS) position in the light of these decisions, to reassess each site and sought the input of the Housing Market Partnership (HMP), albeit against a background where the 2012 SHLAA had led to threats of a judicial review. Also, developers/land promoters who are active in the HMP are, in the real world, and on the evidence, necessarily both keen to talk up prospects of delivery⁵⁰ of their sites when promoting them but also prone collectively to downplay the prospects of delivery when HLS is at issue, in the teeth of a rapidly improving economic outlook over the last 18 months.
- 5.74 On 12 December 2013 Inspector Mr Clark then issued a decision letter concerning Hassall Road, Alsager⁵¹. He considered that a 5% rather than a 20% buffer was appropriate but took the view that a 5 year supply had not been demonstrated. Some appellants have since suggested that the Inspector based this upon the existence of a contingency; but this is not how it is expressed. Very little detail was given in respect of sites.
- 5.75 In the meantime, i.e. pending the review from October 2013 to February 2014, the Council did not contest, for the purposes of five individual appeals only, that it could demonstrate a 5 year supply. A workshop with the HMP was held on 19 December 2013 and written representations were also subsequently received.
- 5.76 In February 2014 the Council published a HLS Position Statement (base date 31 December 2013) whose purpose was to reflect the Council's reconsideration of its position in the light of the October decisions and in the light of current evidence and also to accompany the Plan's housing trajectory.⁵² It sets out the 5 year supply position for the period 1 April 2014 to 31 March 2019 (not 1 January to 31 December in any year).
- 5.77 More recently, the Council has sought also to reflect the HLS guidance given in the National Planning Practice Guidance (PPG) published on 6 March 2014. Firstly, the PPG supports the use of Department for Communities and Local Government (DCLG) projections as a starting point to establish the housing requirement. Secondly, the PPG provides guidance, *inter alia*, that when assessing whether there has been a record of persistent under-delivery

⁴⁸ e.g. Albion Chemical Works (para 38); Basford East (para 27)

⁴⁹ CD 9.1

⁵⁰ See CD9.3 para 24

⁵¹ CD 9.6

⁵² Submitted plan, p.414 Figure E.1

- (within the meaning of paragraph 47 of the NPPF) it is indeed appropriate, as the Council has consistently argued, to consider more than the last 5 years, and to look at a longer period to reflect the peak and not just the trough (e.g. caused by the economic downturn) of the housing market cycle. This militates in favour of a 5% buffer in the circumstances pertaining to Cheshire East.
- 5.78 Thirdly, the PPG permits the counting of completions of housing for older people and students. Until receipt of the 144 Audlem Road, Nantwich decision⁵³, the Council considered this had the potential to affect the amount of the housing backlog and therefore the housing requirement; as well as, again, supporting the Council's contention that it does not have a record of persistent under-delivery of housing. Fourthly it permitted windfalls to be included.
- 5.79 At the outset of the present Inquiry, the PPG had only been considered briefly in two recent decisions. The first concerned Elworth Hall Farm, Elworth near Sandbach in the former Congleton Borough⁵⁴. The decision letter is dated 11 April 2014. The PPG was published only after the inquiry had closed; written representations were subsequently required by the Inspector. Short written representations were made by both respective parties in respect of the PPG⁵⁵. At that stage the Council had not been able to investigate at all the implications of the older persons/students accommodation and the implications of C2 and student accommodation, in terms of the overall reduction in backlog, and the requirement had not been assessed. The decision is the subject of challenge by the Council in the High Court.
- 5.80 The Inspector did, however, support the figure of 1,150 despite arguments that it should be higher. He also accepted that the particular windfall allowance was appropriate.
- 5.81 It should be noted that there have been numerous inquiries since the Elworth Hall Farm inquiry.⁵⁶
- 5.82 The second decision concerned land off Dunnocksfold Road, Alsager dated 14 July 2014 (95 dwellings)⁵⁷. The Inspector accepted, in the light of the PPG, that a 5% buffer was appropriate but concluded that a 5 year supply could not be demonstrated: unfortunately this latter view was reached on the assumption that a requirement of 1,350 dpa⁵⁸ represented the Council's view

⁵³ HG 15

⁵⁴ CD 9.5

⁵⁵ GCS 1 Appendix 25

⁵⁶ Weston Lane, Shavington inquiry (1-4 April). That inquiry is part-heard and resumes on 16 September 2014; subsequently at the Close Lane, Alsager inquiry (29 April–2 May); Land west of Audlem Road, Audlem (7 May -); Hind Heath Road, Sandbach (3 June -); 144 Audlem Road, Nantwich (10 June–13 June); Moorfields (17 June -); Crewe Road, Haslington (1 July -); Shavington East, Crewe (13 July -).

⁵⁷ Appendix 3, Stock's rebuttal proof of evidence (Document GCS 2)

⁵⁸ Because of the proposed stepped housing provision, the figure of 1,350 is the proposed housing requirement (reflecting the proposed policies) not the FOAN. The FOAN has not in any event been tested yet

of its full objective assessment of need (FOAN) (NPPF paragraph 47). In fact the FOAN figure for the plan period in the submitted Plan is 1,180 dpa.

- 5.83 Since the beginning of the inquiry, four further appeal decisions have been issued. Two of these are of particular relevance to the point at issue here, but do not give a consistent analysis of the situation. The decision relating to 144 Audlem Road, Nantwich⁵⁹ expresses the views (i) that the FOAN is 1,350; (ii) that a 20% buffer is applicable; and that (iii) consequently a 5 year supply cannot be demonstrated. The decision on the Close Lane, Alsager inquiry accepted that the FOAN was 1,150, and 20% was applied. Mr Stock has prepared a note of matters which affect the views expressed/assumptions made in respect of supply⁶⁰. When coupled with the evidence on lead-in times given to this inquiry Mr Stock is of the view that there is a 5 year supply.

Requirement

- 5.84 As regards the calculation of the 5 year *requirement*, as is clear from the various decision letters included in the various appendices of the witnesses, the view has hitherto been taken by the Secretary of State and his Inspectors that the Regional Strategy (RS) figure of 1,150 dwellings per annum (dpa) is the most appropriate figure to use at the present time when calculating the 5 year housing requirement base figure.
- 5.85 The Secretary of State in Abbey Road⁶¹ considered the RS figure to be appropriate: not only because that figure was the only figure that has been tested through examination but by reference, too, to the DCLG 2011 Interim Household Projections. Further, he considered that "the use of the RS figure will not undermine the Council's aspirations for growth in its emerging LP."

The Hunston judgment⁶²

- 5.86 Hunston⁶³ requires the decision-maker, where the Local Plan Strategy has not been adopted, to consider the FOAN of the area unaffected by policy considerations (upwards or downwards). This is referred to in South Northamptonshire Council v. SSCLG and Barwood Land and Estates Ltd [2014] EWHC 573 (Admin) (10 March 2014) (Ouseley J paragraphs 30-34)⁶⁴.

"30. In my judgment the crucial point to take from the Hunston case is how to interpret paragraph 47 (i) of the NPPF, relating the requirement for a full objective assessment of housing needs in the housing market area to the subsequent qualification that that be done so far as is consistent with the policies in the Framework, before the Local Plan is produced, reconciling or balancing the two aims.

⁵⁹ Document HG 15

⁶⁰ Document CEC 27

⁶¹ CD 9.1

⁶² As Sir David Keene observed in the Court of Appeal (para 4): "Unhappily, as this case demonstrates, the process of simplification [in the NPPF] has in certain instances led to a diminution in clarity."

⁶³ CD 10.2

⁶⁴ CD 10.3

32. *A revoked RSS is not a basis for the application of a constraint policy to the assessment of housing needs, because it has been revoked and cannot be part of the Development Plan. The same would be true of an out of date Local Plan which did not set out the current full objectively assessed needs. Until the full, objectively assessed needs are qualified by the policies of an up to date Local Plan, they are the needs which go into the balance against any NPPF policies. It is at that stage that constraints or otherwise may apply. It may be problematic in its application, but that is how paragraph 47 works.*

33. *In principle, what is said about full objectively assessed housing needs must apply where the revoked RSS figure was based on growth projections or policies which went beyond a full objective assessment of housing needs. In practice, it may be more difficult to judge the extent to which those objectively assessed needs in the housing market include or exclude a former growth strategy in a revoked or out of date plan. But that remains a planning judgment."*

(underlining added)

5.87 Gallagher⁶⁵ is entirely consistent with Hunston. Hunston establishes the importance of considering FOAN in a s.78 inquiry where a local plan is yet to be adopted. It did not directly address the full meaning of FOAN because it was not an issue. In that case it may be observed that the 688 dpa figure was the DCLG projection. The figure Hunston argued for at the inquiry was for 720 dpa⁶⁶ "to take account of vacancies, second homes and the like". There is no reference to what Gallagher refers to as "policy on" considerations.

5.88 In Gallagher the judge was considering a challenge to the adoption of the Solihull Local Plan and it was argued that the housing provision made in the plan was not supported by any figure for FOAN (para 36).

5.89 Understandably and importantly the judge defined the relevant terms:

"As a preliminary point, it will be helpful to deal briefly with the different concepts and terms in play.

a. Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. They provide useful long-term trajectories, in terms of growth averages throughout the projection period. However, they are not reliable as household growth estimates for particular years: they are subject to the uncertainties inherent in demographic behaviour, and sensitive to factors (such as changing economic and social circumstances) that may affect that behaviour. Those limitations on household projections are made clear in the projections published by the Department of Communities and Local Government ("DCLG") from time-to-time (notably, in the section headed "Accuracy").

b. Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but is not necessarily the same. An objective assessment of housing need may result in a different figure

⁶⁵ CD 10.4 Gallagher Homes Limited, Lioncourt Homes Limited v Solihull Metropolitan Borough Council[2014] EWHC 1283 (Admin)

⁶⁶ CD 10.1 para 19 quotation from para 27 of Inspector's decision letter

from that based on purely demographics if, e.g., the assessor considers that the household projection fails properly to take into account the effects of a major downturn (or upturn) in the economy that will affect future housing needs in an area. Nevertheless, where there are no such factors, objective assessment of need may be – and sometimes is – taken as being the same as the relevant household projection.

- c. *Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a “policy on” figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured.* (underlining added)
- 5.90 The primary submission (paragraph 73) was that market and affordable housing needs should have been assessed - as required by paragraph 75 of NPPF. Here they have been⁶⁷. At paragraph 81 the judge noted that the Inspector had confused ‘policy off’ housing needs with ‘policy on’ housing requirement targets. Thus, properly understood, Hunston, Barwood and Gallagher are consistent, and the Gallagher definition of FOAN is the law.
- 5.91 Reference was made to the Droitwich decision.⁶⁸ Paragraph 8.45 of the Inspector’s report is consistent with the above analysis: migration and economic considerations etc. can be taken into account, but that case does not suggest that policy-on economic growth is relevant to FOAN.
- 5.92 It is wrong to refer to former RS policy as being policy constrained. Properly understood in context paragraph 1.3 of the CELP does not mean that it was. RS Policy was that the three boroughs which now comprise Cheshire East should provide for their needs (see e.g. RS Policy MCR3) and the CELP merely notes the Green Belt restraint to meeting policy-on growth.⁶⁹ The RS figure of 1,150 dpa was thus not policy affected, whether upwards or downwards. As Mr Stock makes clear, ‘policy on’ growth was directed in particular to the Manchester and Liverpool conurbations rather than to the Green Belt in what is now Cheshire East.
- 5.93 In any event, para 3-030 of the PPG, properly interpreted, advises that where there is no robust (which must mean objective and tested) recent assessment of housing needs, the DCLG household projections should be used as the starting point. 1,150 dpa sits well with the 2011-based projections of 1,050 dpa. The 2013 2011-based interim household projections expressly replace the 2008 projections.

⁶⁷ See eg CEC 19A page 22 and ff; and CEC 19B page 11 Figure 3.1, pp 43 and ff.

⁶⁸ SB 4, Appendix 2

⁶⁹ BH 2 Appendix 10, page 3

- 5.94 For the appellant, it is argued that reliance should be placed on the figure of 1,350, derived from the submitted Plan. However, this would not only be contrary to the Abbey Road decision, but would be a serious misapplication of Hunston. It is clear that that figure (or more accurately the figure of 1,200 to 2014/15, 1,300 thereafter to 2019/20)⁷⁰ "also factors in the Council's aspirations for employment led growth"⁷¹ and thus constitutes the (higher) housing requirement rather than the FOAN.
- 5.95 Applying the definitions provided in the Gallagher case to the figures in the CELP Background Paper on Population Projections and Forecasts (March 2014), it is clear that the 'FOAN' figure is in the Council's view 1,050 to 2021; 1,180 over the whole plan period to 2030; and that the 'housing requirement' figure (i.e. the 'policy on' figure) is 1,200-1,300 for the relevant 5 year period with which this appeal is primarily concerned. The FOAN is not agreed by the Council to be 1,350.
- 5.96 The figures are not only untested and disputed (too high as well as too low) they are fundamentally also policy-affected: i.e. they reflect an economic growth policy which would require significant Green Belt release, which has yet to be upheld by the independent inspector, as well as actual growth and the delivery of significant infrastructure.
- 5.97 Moreover, the appellant disputes the validity of the CELP figures themselves. This inquiry is not the forum for that debate, as recognised both by the Launceston Inspector's decision⁷² and, of course, by the Court of Appeal in Hunston⁷³. The best objective evidence available at the moment is the figures derived from the DCLG.
- 5.98 The Council has put before the inquiry its response⁷⁴ to questions raised by the CELP Inspector not because it seeks to argue the merits of the points but simply to show the current inquiry that the Council has points to make. Table 2.1⁷⁵ sets out the key FOAN assumptions⁷⁶ and the document addresses all of the Inspector's points including paragraph 2a-019 of the PPG. The Council has relied on the figure of 1,180⁷⁷. The most recent decision (Close Lane, Alsager) takes the view that 1,150 is robust too.
- 5.99 As to backlog, the difference between the parties in terms of amount derives directly from the base requirement.

⁷⁰ Policy PG1: CELP page 60

⁷¹ Ibid, Para 8.8, page 61

⁷² GCS 1, Appendix 11, para 49

⁷³ Para 26

⁷⁴ CEC 19A and CEC 19B

⁷⁵ CEC 19A pp12-13

⁷⁶ Note that they show why 2008 projections are not reverted to in this case for the post 2021 period: the 2008 projections were pre economic downturn, only reflect the 2001 census and for the reasons set out on page 13, supported by Professor Holmans (another of his documents is relied upon by the Appellant)

⁷⁷ GCS 1 Appendix 18, April 2014 document, the substance of which is consistent with Gallagher/FOAN but one needs to bear in mind the pre-Gallagher terminology.

- 5.100 As to a buffer, the Council's case is clearly supported by two recent appeal decision letters⁷⁸ and by the PPG which expressly refers to peaks and troughs. It has to be noted that the PPG postdates Cotswold. An attempt was made to undermine the Dunnocksfold Road decision⁷⁹ but the Inspector was correct to refer to "the historic and cumulative robust long term record of delivery." The February Position Statement includes the table of annual completions since 2003⁸⁰. This shows that for seven consecutive years there was a cumulative surplus of completions over requirement.
- 5.101 A more appropriate view of the 'peaks and troughs' has to cover a period of some 10 years, to include allowance for the economic downturn, the problems of finance for developers and purchasers. Moreover, the evidence is that many thousands of dwellings have been permitted in the last four years alone. There is no shortage of choice and competition, indeed in the vicinity of the appeal site, there are the Basford West and Basford East sites, Shavington Triangle and Shavington East, Crewe Road, Crewe and another two sites in the Gresty area. In nearby Nantwich, Kingsley Fields also has resolution to grant permission (subject to s.106).

Supply

- 5.102 The parties have put before the inquiry various notes including a disputed sites paper.⁸¹ What is notable in this case is the search for certainty rather than realistic prospects (e.g. Gunco site, Chelford Cattle Market). Adherence to SHLAA 2013 lead-in times is applied to virtually every site in the teeth of the clear and dramatic evidence of market revival in the past 15 months or so, as evidenced in Mr Stock's Table 8.1⁸² The appellant's approach is wholly unrelated to reality: e.g. Loachbrook Farm, Kay Metzeler – which have now actually commenced. Again, Basford East now has a planning application entirely in line with the progress the Council has correctly envisaged based on a thorough knowledge of all the sites. The 144 Audlem Road Inspector recognised⁸³ that

"not only are significant efforts being made by the Council to address delays in dealing with reserved matters and agreements, but also that there is an increasing level of positivity and willingness among developers to build out housing sites; some optimism is reasonable."

- 5.103 As regards build rates, there is common ground in respect of sites of up to 200 dwellings. The Council takes the position that where it has evidence that more than one developer (or builder outlet) is likely to develop the larger sites then the build rate should be higher than assumed for the 200 dwelling plus category.⁸⁴

⁷⁸ Hassall Road and Dunnocksfold Road

⁷⁹ Para 52

⁸⁰ Table 1, page following paragraph 1.25

⁸¹ CEC 13

⁸² GCS 1, page 17

⁸³ Page 9, Para 51

⁸⁴ See too CEC 17 p.28 paragraph 83 and footnote 48

5.104 Confidence in the delivery of sites where the Council has made a resolution to permit development subject to the conclusion of a s.106 planning obligation is demonstrated by how many sites have had the s.106 obligations signed since the February Position Statement. In respect of draft strategic sites, the Council has shown its continuing preparedness to grant permission for such sites⁸⁵, and it only seeks to include contributions from a restricted number of (many) strategic sites within its 5 year calculation in defined circumstances set out in the Position Statement. In summary, the Council believes that it can demonstrate a 5 year supply.

The effect of the proposed development on the free flow of traffic on the surrounding road network

5.105 The proposed development is considered likely to give rise to severe traffic impacts, contrary to paragraph 32 of the NPPF. The principal concern is the impact of this development on junctions close to the railway station in the A534/Nantwich Road and Crewe Road/Gresty Road corridors.

5.106 The railway station is an important and busy destination. Six railways converge on Crewe which have resulted in restrictions for the circulation of traffic around Crewe. The restrictions (including height) caused by the Gresty Road railway bridge are apparent from the video evidence shown to the Inquiry⁸⁶. At present there are queues of traffic on Gresty Road in the am peak, when it can take 8½ minutes to reach the A534 junction from the bridge. The situation is exacerbated by there being only a single lane each way over the bridge outside the station (known as 'Station Top') on Nantwich Road, and the short two-lane exit from the Macon Way/Weston Road ("Crewe Arms") roundabout almost immediately narrowing to a single lane heading westwards. Compounding the traffic problems in this locality are two pedestrian crossings, bus stops and a taxi drop-off area. Only a few hundred metres to the west of the station entrance lies a 'Y' or triangular configuration of junctions: the Mill Street/South Street and A534/ Gresty Road junction (referred to at this inquiry as Junction 5) and the Gresty Road/South Street/Catherine Street junction at the centre of the 'Y' (referred to as Junction 4)⁸⁷.

5.107 The Council has two main concerns. The first is that the Crewe SATURN traffic model (2006 base) did not validate well with traffic growth applied to 2013 against 2013 observed flows at these nearby junctions, and have had to be adjusted by the appellant for the 2015 base year to achieve validation, but the appellant has used the unadjusted traffic flows as the basis for the 2030 forecast year.

5.108 It is common ground that the model did not validate well against the GEH criterion and had to be manually adjusted in order to replicate the observed turning movements. The appellant argues that the TA⁸⁸ did not use the

⁸⁵ Position Statement: Stock, Appendix GCS 1 and Rebuttal proof

⁸⁶ Document GM 3

⁸⁷ See map appended to the back of Document HG 01, for locations of Junction 4 and 5 and to Plan Insp.1 for larger scale map

⁸⁸ CD 2.11 Appendix 8 Transport Assessment Volume 1 Text and Plans, p.34 para 8.15

- adjusted data for 2030 forecasting because of *“the additional changes occurring within the period to 2030, particularly in relation to development assumptions, and the influence this will have on traffic movements.”* However, both the 2015 and 2030 modelling include the – yet to be constructed - Crewe Green Link Road South scheme and the Basford West Spine Road. Apart from some more recent planning permissions (e.g. Crewe Road, Crewe and Shavington East) all other consented development is in the model.
- 5.109 The Council’s position is that there was no justification for not using the 2015 adjusted figures as the starting point for the 2030 forecasts. However, the 2006 base year flows are known to be in error (based on comparisons of the growthed 2006 base year to 2013 levels compared with 2013 observations). A forecast to 2030 based on these flows would not be reliable; it would be more robust to use the 2013 data. Moreover, the Design Manual for Roads and Bridges⁸⁹ clearly warns as to the dangers inherent in models based on data more than five to six years old and advises that a “present year validation should be presented” and obviously then used for future year forecasts.
- 5.110 The appellant referred to Table 4.5 of the 2011 Model Forecasting Report⁹⁰ but readily accepted that this table concerns the growth within the matrix (groups of zones which form sectors) but does not tell us what the % figures translate to in terms of numbers and does not assign traffic to a particular junction or corridor – so it says nothing about how many vehicles will be using the Crewe Road/Gresty Road corridor. The Council’s approach has been to consider total trip ends (i.e. trips) for the whole model area (Crewe and Nantwich⁹¹) and this shows only low to moderate growth (9-10%) over 15 years (2015-2030) – i.e. not of particular significance.
- 5.111 Despite the concerns as to the modelling having been raised in the October 2013 draft consultation response, the appellant has not presented any sensitivity test i.e. run the model for 2030 on the basis of the 2015 adjustments. Moreover, the 2013 counts undertaken on behalf of the appellant in March 2013 at nine junctions were only of turning movements, not of queues and delays. The Council’s witness’s experience, based on four years’ highways advisory work for the Council in the Crewe area is that the queues and delays at junctions 4 and 5, the Station Top and Gresty Road corridor are much worse than assumed for 2015.
- 5.112 The 2015 modelling assumes that the Basford West Spine Road and Crewe Green Link Road South (CGLRS) are both open in 2015. The CGLRS will give some relief in the corridor – it is estimated this at 151 am movements and 126 pm movements as a result of the CGLRS. However, the corridor itself ought to be busier overall with Basford West traffic also being assumed in the

⁸⁹ CEC 03, Volume 12 Section 2 Part i Traffic Appraisal in Urban Areas, Appendix B Local Model Validation Report, paragraph B9.1

⁹⁰ CD 11.7, p.4.9

⁹¹ Note, for completeness, that the whole of Nantwich area is given only 2 zones, so that is why the model is referred to, for the purpose of the A51 corridor, more accurately as a Crewe model.

- model. This ought to mean higher impacts on the Crewe Road/Gresty Road corridor than the relief offered by the CGLRS. Yet the 2015 junction modelling outputs presented by the appellant do not fully reflect congestion issues that are even now apparent.
- 5.113 The second of the Council's main concerns is that the appellant's modelled flows do not include all consented or likely flows and therefore impacts on the junctions are understated. The Council takes the view that the 2030 forecasts are light – i.e. they underestimate traffic – by some 84 am two-way traffic movements and 165 pm two-way movements.
- 5.114 Even leaving aside the Council's two main concerns, the impacts in terms of delay are unacceptable and there are no adequate mitigation measures for these junctions.
- 5.115 Mr McKinney's Tables (proof of evidence Tables 4-7 and Rebuttal proof Tables 1-8) are agreed⁹². These show that the proposed development would worsen traffic conditions and give rise to considerable delays. This is even *without* the use of adjusted 2015 traffic data as the basis for 2030 forecasts which it is believed would be likely to increase further the delays forecast.
- 5.116 Further, Mr McKinney's analysis of the overall delay at the Mill Street/South Street/Nantwich Road junction (Junction 5), drawn from the Appendices accompanying the TA, was also not disputed. This shows that that junction would be the subject of delays of 128 seconds per vehicle⁹³ (an increase of 50 seconds from 78 seconds⁹⁴) in the 2015 am peak hour with development, compared to the 2015 pm peak hour base. This level of delay would be unacceptable.
- 5.117 If there were considered to be a solution, the Council would be seeking an appropriate financial contribution. The problem with the Gresty Road/Nantwich Road corridor is that physically there is little scope for improvement beyond the limited works at South Street which are already proposed and funded, and beyond the Scoot enhancement/UTMC measures already planned and taken into account.
- 5.118 In respect of Junction 4, the appellant's witness admitted that there must be improvements but Mr McKinney's Tables show that the junction has unacceptable impacts even before the signalling, and that the signalling makes things even worse.
- 5.119 For the appellant it was argued that the Council is implicitly prepared to put up with such levels at certain junctions (not, however, be it noted Junction 5) in its strategic modelling work (a more recently constructed Saturn model than used by Mr Thompson in his TA work) in order to accommodate the Local Plan Strategy. Therefore 128 seconds delay at Junction 5 should also be considered acceptable. Nevertheless, even that degree of delay is likely to be

⁹² GM 1 and GM 4

⁹³ CEC 06 extract from TA Appendix M39

⁹⁴ CEC 05 extract from TA Appendix L46

higher if the 2015 adjusted flow figures had been used as the basis of 2030 forecasts.

- 5.120 A number of development/distribution scenarios have been tested in respect of the emerging Local Plan Strategy. A scenario (No.2) including development of the appeal site (and additional land up to Crewe Road, totalling 1,261 dwellings) was considered but (a) this scenario is not being pursued (b) more importantly, development now permitted or likely to come forward in the Crewe Road corridor already equals that figure (and of course the lower figure of 261 assumed in other options). The Mitigation and Impacts⁹⁵ report moreover notes that additional detailed modelling of specified junctions (including the Mill Street junction) may be necessary.
- 5.121 As mentioned the 1,261 (and 261) have already been permitted even before the current appeal site. Also, the 128 seconds delay per vehicle at that junction must be seen in context that further substantial development is yet to be permitted and represents more than a contribution of only about 1/8th of the total development tested in Options 2 and 5. It is not correct therefore to assert that the level of delay is implicitly acceptable.

Whether a grant of planning permission for the proposed scheme would unacceptably prejudice the preparation and adoption of the emerging Local Plan, with particular regard to distribution of housing sites and identification of a Green belt extension

- 5.122 The Local Plan Examination is scheduled to begin its hearings in September. This follows extensive public consultation. There has been an Issues and Options paper in 2010, a Place Shaping Consultation in 2011 followed by preparation and consultation on government-funded Town Strategies in 2012, consultation on Preferred Options (two documents entitled, respectively, Development Strategy and Emerging Policy Principles in February 2013; consultation on additional sites submitted by developers, land promoters or landowners in May 2013; consultation on a Pre-Submission Core Strategy in Autumn 2013, and consultation on the Local Plan Strategy submission document this Spring. The appeal site has never been a preferred option in any of the foregoing.
- 5.123 The appeal site is, without question, large – over 43 ha – and a significant amount of housing (and other development) is proposed: approximately three quarters of the annualised average housing figure of 1,150 dpa set out in the former RS. For the appellant it was agreed that it is their contention that the site should be allocated instead of preferred sites; not that the appeal site should only be in addition to the others. This should be tested at the Local Plan Examination.
- 5.124 Significantly, too, the appeal site falls not only outside the settlement boundary of Crewe⁹⁶ but is within long-established Green Gap. Quite apart from obvious and inevitable landscape/visual impacts, this substantial

⁹⁵ CD 11.21 and CD 11.22: Cheshire East Transport Models Review – Summary Highway Impacts and Mitigation Proposals for Local Plan Strategy. May 2014

⁹⁶ this runs to the north of the railway line and thus north and not on the edge of Gresty Lane

- development would considerably erode, indeed further erode, the physical gap between Crewe and Shavington.
- 5.125 The submitted CELP includes the appeal site in an Area of Search for an extension of the North Staffordshire Green Belt to the south, west and east of Crewe. This current appeal seeks to pre-empt the outcome of the Examination. The issue as to whether the appeal site should be included in an Area of Search for Green Belt, or (the second preference) whether the appeal site should form part of a Strategic Gap, should be considered and resolved at the Examination, where all parties with an interest can have their views considered, not at a s.78 appeal. It is accepted for the appellant that the “necessary debate” on “the merits (or otherwise) of including the appeal site and adjoining land within an extended area of Green Belt” must take place through the Local Plan process.⁹⁷
- 5.126 Prematurity has not been a reason for objection taken by the Council at the ten or more inquiries held since the receipt of the Secretary of State’s decision in the Abbey Road, Sandbach in October 2013.⁹⁸ The PPG issued in March 2014 advises that a Plan which has been submitted for examination is to be regarded as at an “advanced stage” of the process. It is clear that the government wished to make it clear that local authorities in their discretion⁹⁹ may refuse on the basis of prematurity since by this stage there will have been considerable public consultation and work. Even though there may be objections to the plan such that it may not attract substantial weight, the point is that weight is not the issue, it is the prejudging of a local plan inquiry which is the anathema of NPPF policy (paragraph 160). The Council consider, consistently with the PPG test¹⁰⁰ that it is justified in this case in taking the prematurity objection. The proposed provision of 880 dwellings etc., in one location, and in this Green Gap/proposed Green Belt Area of Search, is so substantial that the plan-making process would be undermined by the predetermination now of the scale and location of new development which is central to the emerging Local Plan.
- 5.127 The Council takes the view that it can demonstrate a 5 year supply of deliverable housing in accordance with government policy. But even if the view were taken that it could not, the granting of permission for this development on this Green Gap site, rather than elsewhere on sites outside the Green Gap, in advance of the imminent examination, is not considered to be justified.
- 5.128 The Council has acted both lawfully and reasonably in being prepared to grant planning permission for certain strategic sites in advance of the Local Plan. As regards the Kingsley Field site, when the officer’s report¹⁰¹ refers to the site being identified as a preferred site, “the development of the site is therefore considered to be acceptable in principle ...” this is addressing the prematurity

⁹⁷ IR 2, paragraphs 2.7 and 2.10

⁹⁸ Paragraph 33: GCS 1, Appendix 2

⁹⁹ Fox Strategic Land High Court decision: BH 1, Appendix 10 paragraphs 47-50

¹⁰⁰ 21b- 014

¹⁰¹ HG 20, Page 42 Conclusions section

concern, as members would be well aware of their own policy. In a plan-led system in the absence of adopted site allocations to grant planning permission on sites which have made it to an advanced stage of the local plan process is "the next best thing" and far preferable to *ad hoc* planning.

- 5.129 It was entirely inappropriate for this appeal to be brought to an inquiry. The CELP was submitted to the Secretary of State on 20 May 2014. For the appellant it was conceded that the necessary debate on the merits (or otherwise) of including the appeal site and adjoining land within an extended area of Green Belt must take place through the Local Plan process. This entirely supports the Council's putative reason for refusal on this point alone.

The Planning Balance

- 5.130 The legal requirement is provided by s.38(6) of the Planning and Compulsory Purchase 2004 Act: the decision should be determined in accordance with the development plan unless material considerations indicate otherwise. There is agreement that important policies are breached in the development plan. It cannot be said that the proposal is in accord with the development plan as a whole. There would be an important breach of Green Gap policy, and other sites outside the Green Gap exist in any event. CELP policy does not assist the appellant, nor does the highways issue (a reason for refusal in its own right) nor do the loss of best and most versatile land and loss of important hedgerows.
- 5.131 The appellant refers to benefits; and there are undoubtedly benefits in terms of the provision of needed affordable housing and other benefits (as opposed to necessary mitigation). However, the appellant was not able to say how many dwellings he would expect to have been completed by December 2018 (the end of his 5 year period). This hardly amounts to a compelling argument to grant permission to assist with the 5 year supply. There would be no harm, yet considerable benefit to the public interest and fairness to all those who invest in the local plan process, if the appellant were left to argue their case to be a strategic housing site rather than an Area of Search for Green Belt and instead of other sites, or to be allowed in addition.
- 5.132 Finally, a point was made that few members of the public had been present during the inquiry. Firstly, members of the public were encouraged to, and did all, speak on the first day. Secondly, a number of speakers drew attention to the significant level of opposition. The Chairman of Rope Parish Council also spoke and presented informed and considered evidence. There were other memorable contributions made on the first day by interested persons. Representatives of members of the public therefore did attend and it would be wholly wrong to assume that local people were supportive. The letters at application stage - and since - show that they are not.

6. THE CASE FOR HIMOR GROUP LTD.

- 6.1 The Council argued that the appeal scheme would breach the development plan policies, but there are many examples where the Council has either granted planning permission or allocated land in breach of BCNRLP Policies NE.2, NE.4, RES.5 and NE.12. In this appeal it was argued that the Council

can demonstrate a 5-year housing land supply, but when the Council's preferred sites in the emerging Local Plan are being considered the presence of a 5 year land supply has not prevented support for grant of planning permission; most recently at the Shavington Inquiry¹⁰².

- 6.2 The Council's own traffic studies carried out to examine and justify sites selected in the emerging Local Plan (CELP) demonstrate that at the key junctions identified in this appeal, there would be a worse performance caused by the sites selected. The same work shows that Junction 5¹⁰³ can handle without difficulty more traffic than is generated by this scheme. Here the Council argues that the appeal scheme would be premature, but this matter is not even addressed in a Committee Report supporting release of a site for 1,100 homes at Kingsley Fields¹⁰⁴.
- 6.3 The reason for this apparent inconsistency is said to be that weight has been afforded to the as yet untested CELP. However, this also could be seen as profoundly unfair, and the Council's criticism of the appeal scheme as hypocritical.

Development plan

- 6.4 The development plan consists of the saved policies of the BCNRLP. However, those policies are only saved by virtue of the Secretary of State's Saving Letter¹⁰⁵ and it is essential that those policies are read subject to the caveats set out in that letter. The letter expected a prompt adoption of a new Local Plan. This has not happened. Of greater importance is the requirement to have regard to up-to-date policy which in 2014 must include the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG). There is also Court authority on the correct interpretation of the NPPF, as is discussed below.
- 6.5 The statutory requirement in s.38(6) of Planning and Compulsory Purchase Act 2004 Act remains, but there are important material considerations in the form of up-to-date guidance which indicates that the decision needs to be made other than in accordance with the BCNRLP. NPPF para 215 requires policies of the development plan to be tested for consistency with the Framework and weight afforded to those policies according to the degree of compliance with the Framework. This was the issue before Kenneth Jones J in the Colman decision.¹⁰⁶ In that case the court tested various development plan policies against what the learned judge called the "cost/benefit" approach of the Framework.

"16. For reasons that are apparent from the foregoing analysis it was common ground at the inquiry and in this appeal that the Inspector had first to identify and analyse the relevant policies in the development plan and, secondly, to determine the extent, if any, to which a relevant policy was consistent with the NPPF. The

¹⁰² HG 14

¹⁰³ See plan attached to Document HG 1

¹⁰⁴ HG 20

¹⁰⁵ CEC 24

¹⁰⁶ CD 10.8

central ground of challenge in this appeal is that the Inspector failed properly to analyse a number of relevant policies and also reached conclusions on consistency that were wrong. Also the challenge was presented under two separate heads. The points are closely interlinked, and I shall deal with them together. I shall look in turn at the relevant policies."

"19. ... 'Policy SP CO1

Landscape Character and Local Distinctiveness

The distinctive qualities and features of Devon's Landscape Character Zones, illustrated in Map 5, should be sustained and enhanced ... Policies and proposals within each part of Devon should be informed by and be sympathetic to its landscape character and quality.' (My emphasis)"

"21. LP Policy ENV1 states:

'Policy ENV1 (Development in the Countryside) Development in the countryside will only be permitted where:

A rural location is required.

It provides economic or social benefits to the local community: and

It protects and enhances its beauty, the diversity of its landscape and historic character, the wealth of its natural resources and its ecological, recreational and archaeological value."

"22. *These policies are, in my view, on their own express terms far removed from the 'cost/benefit' approach of the NPPF. The policies as such do not permit any countervailing economic or similar benefit to be weighed in the scales. A submission that such benefits may be implicitly taken into account would be immediately rejected as running directly contrary to both the language and rationale of the relevant policies. Mr. Cocks QC sought to meet this formidable objection by submitting that such benefits, recognised as central to the NPPF, would always constitute a 'material consideration' relevant to the grant of development permission, and should, therefore, be 'read into' the relevant policies.*

23. *I reject that argument on two grounds. First, the NPPF in referring to 'relevant policies' is plainly directing the mind of the decision maker to the express terms of the relevant policies and requiring the decision maker to compare, for consistency, the express terms with the 'cost/benefit' approach of the NPPF. Secondly, and perhaps more importantly, it is a fundamental and long established principle of planning law that something identified as a 'material consideration' (such as the putative economic and environmental benefit in the present context) is conceptually distinct from considerations in the development plan and does not ceteris paribus carry the same weight as an aim or consideration identified in the development plan itself. It is, therefore, essential, both analytically and in policy terms, to separate objectives or considerations specifically set out in the development plan from something else that can count only as another 'material consideration'. Mr Cocks' argument confounds elements that fall within different relevant categories, and which have a different character for planning purposes, and it cannot rescue the inconsistency that is obvious on its face between the relevant policies and the NPPF."*

6.6 It is necessary to carry out that exercise in relation to the BCNRLP policies relied upon to justify refusal in this case.

- 6.7 However, the BCNRLP itself makes clear that it is not intended to guide development decisions after 2011. The plan explains at para 1.1¹⁰⁷

"This Replacement Local Plan has been prepared by Crewe and Nantwich Borough Council in accordance with the 1990 Town and Country Planning Act. The Plan covers the whole of the Borough of Crewe and Nantwich and it relates to development up to the year 2011."

It follows that the housing policies in the adopted BCNRLP are out of date. This has knock-on effects on policies NE.2 and RES.5 which were both written in the knowledge that there was sufficient land to accommodate housing development identified in the plan up to 2011. This is an express finding of the Close Lane, Alsager Inspector decided that these policies were out of date in so far as they constrain development¹⁰⁸.

NE.2: Countryside and RES.5: Housing Provision in Countryside

- 6.8 These policies protected the countryside from unnecessary development. They were policies written in 2005 before Planning Policy Statement 3 was issued, (itself now superseded by NPPF), which created a step-change away from protecting greenfield land and towards an emphasis on housing delivery. Accordingly, the housing policies of the BCNRLP identified sufficient land to last until 2011 and policies NE.2 and RES.5 "closed the door" to prevent further release.

- 6.9 We are now beyond 2011 and these policies are out of date irrespective of the 5 year supply position (see Close Lane, Alsager decision, para 11)

"... As such, post 2011, these settlement boundaries and SZLs would have the effect of constraining development, including housing, within these settlements. The restrictions imposed upon development within the open countryside, outside the settlement boundaries, within Policies NE.2 and RES.5 of the Replacement Local Plan, are therefore clearly time expired and should be considered out of date. ..."

- 6.10 However, the Inspector also rightly observed¹⁰⁹, pursuant to the duty to assess policies for compliance with NPPF para 215 (as explained in Colman), that the part of the policies which sought to protect the character and amenity of the countryside was consistent with the Framework.
- 6.11 In this appeal, the appellants accept that the effect of the proposal on the character and amenity of the countryside is a factor which needs to be taken into account, but only as part of the overall balance that NPPF para 14 requires to be undertaken. The Burgess Farm decision demonstrates that even development which severely affects the character of the countryside can nevertheless be sustainable.¹¹⁰

¹⁰⁷ Local Plan para 1.1

¹⁰⁸ Appeal Decision 2203282 - Document HG 17

¹⁰⁹ at para 12

¹¹⁰ CD 9.10 - see para 21 of Decision Letter

NE.4: Green Gap

- 6.12 The appeal site is within the defined Green Gap, as defined in BCNRLP Policy NE.4. Insofar as this policy seeks to prevent settlements merging it is consistent with the Framework. However, if the policy is interpreted without consideration of its effects and benefits to prevent any housing development in the Green Gap, then it would not be Framework compliant. It would be wrong to regard NE.4 as setting up an irrebuttable, in principle presumption against housing development within the Green Gap for the following reasons.
- 6.13 Firstly, the Rope Lane Inspector¹¹¹ did not treat the Green Gap as an in principle “no go area” for housing. Secondly, the Council has itself granted planning permission for a total of no less than 345 dwellings on four separate Green Gap sites,¹¹² so it cannot have regarded Green Gap as a “no go area”. Much has been made of the 2003 Local Plan Inquiry Inspector’s comments about “nibbling” of the Green Gap yet the Council has issued permissions or made allocations in the Green Gap despite what he said. This appears to be inconsistent on behalf of the Council. Thirdly, the Council intends to allocate a Strategic Site (150 houses) at Crewe Green at the narrowest part of the Green Gap between Crewe and Haslington.¹¹³ The BCNRLP Inquiry Inspector said this was one of the vulnerable Green Gap locations. This allocation materially narrows this vulnerable gap, yet it is regarded as acceptable by the Council.
- 6.14 The correct approach to a policy of this nature, which intends to keep separate two settlements, is as set out in the Rothley / Mountsorrel decision.¹¹⁴ In that case the relevant policy was an Area of Local Separation (ALS) Policy CT/4 – designed to keep Rothley and Mountsorrel separate. The proposal involved erection of 250 dwellings and the Inspector approached the policy in this way
- “8.17 Therefore, I agree with the Council that Policy CT/4 does not clearly conflict with the NPPF and I give it due weight, even though the NPPF does not specifically refer to ALS. But that does not mean that all land within existing ALS in the Borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Policy CT/4 cannot be given full weight because it represents an outright ban on open market housing within the ALS, without the possibility of any countervailing benefit outweighing the prohibition.”¹¹⁵*
- 6.15 The Inspector went to consider whether CT/4 was policy for the supply of housing and concluded that it was. The Inspector noted conflicting opinion on the matter in the Davis¹¹⁶ case and the Cotswold¹¹⁷ case and then reached this conclusion:

¹¹¹ CD 9.17

¹¹² BH 2 Appendix 13

¹¹³ see chart of applications / allocations

¹¹⁴ CD 9.15

¹¹⁵ CD 9.15 IR para 8.17

¹¹⁶ [2013] EWHC 3058 (Admin)

"8.19 If a choice were essential, which it is not, the SoS is invited to prefer the approach in Cotswold because the control mechanism in Policy CT/4 is clearly very relevant to the supply of housing: it represents an absolute ban on open market housing in the ALS. The effect of Policy CT/4 is therefore very relevant to the supply of housing. The approach taken in Coalville is correct to point out that paragraph 49 of the NPPF is within the housing section. However, that section presumes that there will be adequate housing provision in the plan. This is clearly not the case here and paragraph 49 needs to be read with this in mind. Furthermore, the limits to development and ALS (and Green Wedge) boundaries were all drawn in the CBCLP 2004 reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management Policies DPD process. This also serves to demonstrate the direct link between ALS and provision of housing."¹¹⁸

- 6.16 At paras 11 and 13 of the Decision Letter the Secretary of State (SofS) agreed with this thought process:

"11. For the reasons given at IR8.10-8.22, the Secretary of State agrees with the Inspector's conclusion at IR8.24 that the appeal proposal would accord with a wide range of development plan policies but that there would be limited conflict with Policy CT/4 (development in Areas of Local Separation (ALS)) to which he gives some weight (see paragraph 13 below). The Secretary of State also agrees with the Inspector that, as agreed by the parties (IR8.23), the appeal site is in a sustainable location for housing development. "

"13. Like the Inspector (IR8.31), the Secretary of State accepts that, if the appeal succeeds, there would be a reduction in openness and the character of the existing ALS between Mountsorrel and Rothley would be changed. However, he also agrees with the Inspector at IR8.39 that, for the reasons given at IR8.32-8.38, the proposed development would not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider ALS. He also agrees that the countervailing environmental benefits, including those arising from the landscaping proposals in the appeal scheme master plan and the careful design of the relief road to include significant areas of new planting, more than outweigh the loss of ALS and the limited landscape harm caused by the loss of green field land."

- 6.17 The South Northamptonshire case was decided 10 March 2014¹¹⁹ and leaves this assessment untouched because this is an exercise of planning judgement by both the Inspector and the SofS:

"48. However, once the Inspector has properly directed himself as to the scope of paragraph 49 NPPF as he did here, the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment. In this case, the policy clearly falls within the scope of the phrase and the Inspector was fully entitled to reach the conclusion on it which he did."

- 6.18 The correct test therefore in this case is the test as approved by the SofS in the Charnwood case, i.e. will the appeal proposal:

¹¹⁷ CD 10.5

¹¹⁸ *ibid* para 8.19

¹¹⁹ BH 2, Appendix 6

"... significantly harm the character and appearance of the area or undermine the planning purposes or overall integrity of the wider ALS (Green Gap)."

This test must itself sit within the overall balancing exercise of NPPF para 14 such that any adverse environmental impacts would need to be weighed against any benefits including environmental, social and economic ones.

- 6.19 As to the impact of the proposed scheme on the Green Gap and the character and appearance of the landscape, that would be limited.
- 6.20 Putative Reason for Refusal No.3 contends that the proposed development of the appeal site would conflict with BCNRLP Policy NE.4 Green Gaps, and be contrary to (unidentified) parts of the Framework and the emerging Local Plan.
- 6.21 The appeal site is not now, has not ever been, and is not proposed to be defined in any development plan as an area of any acknowledged landscape quality. It forms part of a wider area on the southern edge of Crewe where current development plan policy seeks to restrict development in the open countryside generally and in the 'Green Gap' between Crewe and (*inter alia*) Shavington. These policies are proposed to be retained / reaffirmed in the CELP, which also advances the prospect of the extension of the extant Green Belt to include the appeal site and adjacent land. HIMOR have made representations in respect of these policies and have provided a critique of the CELP's Green Belt and Strategic Open Gaps (GBSOG) methodology and conclusions.
- 6.22 In terms of landscape character, the appeal site and the surrounding area is typified by the key characteristics of the Lower Farms and Woodland landscape type and the Barthomley Character Area (LFW 7) as defined in the Cheshire Landscape Character Assessment.
- 6.23 Where the parties differ is in respect of the assessment of landscape and visual effects. The Council contend that the landscape and visual effects of the proposed development have been underplayed primarily because a 'best case' has been assumed in relation to the retention and formation of landscape structure/ green infrastructure. The appellant contends that the submitted Landscape Visual Impact Analysis (LVIA) has set out clearly the 'worst case' in terms of the scale and nature of the proposed development and has then assessed realistically and objectively, on the basis of the submitted Illustrative Masterplan, the landscape and visual effects of that development, and indicates how the existing landscape structure / green infrastructure could be retained and developed.
- 6.24 Within the LFW7 area, the appeal site forms a discrete tract of land defined by Crewe to the north, Crewe Road to the east, Rope Lane to the east and Shavington to the south. The impacts of the development of the appeal site on landscape character would be limited, only be significant at the local level and only at certain development stages. The development of any other major site within LFW7 will be likely to have the same effects. Although the effect of the proposed development on landscape character would be evident and irreversible, this would be so for the development of any greenfield site on the edge of Crewe.

- 6.25 On account of the physical proximity of the appeal site to the existing urban edge of Crewe, and the visual containment of the appeal site, it is well suited for development, as acknowledged in the most recent SHLAA for Cheshire East.
- 6.26 The submitted LVIA sets out, in text and tabular form, an assessment of the visual effects of development.
- 6.27 Development of the scale contemplated in the appeal application will inevitably have some visual effects. Those effects will be experienced on the immediate site edges, from Gresty Lane (between Rope Cottages and Rope Lane - some 860m) and from Rope Lane (between Gresty Lane and Rope Green Farm - some 250m). Details of the separation distances are given in Document IR2, Plan 3. The visual effects only arise from a limited area and from a limited number of viewpoints. Although the change in the views from sections of adjacent roads will be substantial, particularly in the early stages of site construction and development, this does not amount to a compelling objection to the appeal proposals.
- 6.28 The existing linear width of separation that obtains between the southern edge of Crewe and the northern edge of Shavington will be reduced, although that reduction will be limited in scale and, in terms of public perception will only arise in respect of the passage between the two settlements along Rope Lane (the passage along Crewe Road will be unchanged).
- 6.29 There is existing (and visually significant) built development on both sides of Rope Lane within the existing gap, which affects the perception of settlement separation. Whilst it is indisputable that the development of the appeal site would entail the southern edge of Crewe coming closer to Shavington, the development of the appeal site would not materially (or adversely) reduce the physical or perceived separation of Shavington and Crewe along Rope Lane. The residual gap that would remain would perform at least the same functions as the existing gap. Considered against the objectives sets out in the GBSOG, the residual green gap would:
- continue to protect the settings and separate identities of Crewe and Shavington;
 - retain the existing settlement pattern and thus maintain openness (both actual and perceived) between the two settlements; and
 - retain - and as a consequence of the proposed development enhance - the physical and psychological benefits arising from open land near settlements.

As a consequence development of the appeal site would not significantly adversely affect the functional effectiveness of the gap between Crewe and Shavington.

- 6.30 In respect of putative reason for refusal No.3 it is contended that there are no sustainable bases for objection to the appeal proposals.

NE.12: Best and Most Versatile Agricultural Land (BMV)

- 6.31 The appeal site includes areas of land within categories 2 and 3a, which Policy NE.12 seeks to safeguard. A breach of this policy cannot of itself justify refusal for several reasons. Firstly, because the Council has granted permission for 1,100 houses involving loss of 24 ha of BMV at Kingsley Fields. Secondly, appeal decisions show that BMV is to be considered within the overall balance and none of the appeal decisions have required (as the policy does) that land of a lesser quality is not available. The Council has not required the sites it prefers to pass this policy test. Thirdly, the expert evidence in this case shows that the eastern half of the site has no BMV at all; the western side has non BMV mixed in with BMV in every field, the BMV fields are small and affected by the hedgerows which affect their farmability, no present use of the land takes advantage of the BMV status (eg it is not used to grow maize or potatoes), and the site is not viable as an agricultural holding.
- 6.32 Accordingly, the effect of BMV is no more and no less than a consideration to be taken into account in the overall balance. The policy is not consistent with NPPF in so far as it represents an outright ban on development. The appellant has always accepted that BMV, as an "environmental" role, must be given weight in the decision making process. However, the expert evidence in this case shows that despite the substantial area involved, the practical value of the BMV in this case is very limited.

NE.5 / BE.16 / Hedgerows

- 6.33 The Council originally argued for a breach of NE.5 in its putative reason for refusal and switched to policy BE.16 in its Statement of Case.
- 6.34 The only expert evidence on the matter at this inquiry came from Mr. Morton. It is noteworthy that the Cheshire Shared Services has not objected¹²⁰.
- 6.35 The hedgerows are not designated assets. As non-designated heritage assets the level of impact on them will be "low or negligible" and their significance will not be harmed. Housing will bring about inevitable change to the setting of the hedgerows. There would also be countervailing benefits with the appeal scheme. There would be public access to the heritage asset where none presently exists; the hedgerows would be managed, and there would be protection within the scheme of some of the marl pits¹²¹. This is a material environmental consideration. There will be some limited harm to the hedgerows but this must be counterbalanced first by the environmental advantages noted above, and thereafter by the social and economic advantages.
- 6.36 Turning now to the main considerations identified at the start of the inquiry.

¹²⁰ CD 8.11

¹²¹ CD 6.11 at p 69

Will the proposed scheme fulfil the three roles for sustainable development identified at para 7 of the Framework, having regard to relevant development plan policies

- 6.37 As noted at paragraph 8 of NPPF, the three mutually dependent roles of sustainable development are economic, social and environmental.
- 6.38 The Council's case against this appeal scheme is principally based (its prematurity case apart) on allegedly unacceptable effects on the environmental role of sustainable development. In this respect there is little attempt to weigh the social and economic benefits: this is dealt with in one paragraph of Mr Haywood's proof (para 10.24). This approach is not consistent with the advice in NPPF para 8, which requires all three strands to be considered together. This failure is a fundamental flaw in its analysis because, as noted above (paragraph 6.11), the Burgess Farm decision¹²² demonstrates that even serious environmental harm can be outweighed by countervailing benefits.
- 6.39 Not only is the Council's approach flawed, it is inconsistent. It has issued planning permissions for several sites where the same breaches of development plan policy are over-ridden simply because the proposal is included in an as yet untested emerging Local Plan (CELP). The Council is using the saved BCNRLP policies in order to hold back development it does not want whereas "pet" sites pass through the development plan analysis process unscathed. This cynical use of saved development plan policies has been criticized elsewhere;

*"It seems to me that the 'Saving Letters' make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which requires a 5 year land supply. These 'material considerations', now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF. Importantly, there is an obligation to consider the development plan in the light of any absence of a 5 year supply which predated the NPPF and can be traced back to 2006."*¹²³

- 6.40 All of the development plan policies must first be assessed against the para 215 test and, as has been seen above, all are to a greater or lesser extent in conflict with NPPF. In terms of sustainable development, the operation of NPPF para 14 is obviously important in this case.
- 6.41 With the exception of Lang J DBE in the Davis case, it is clear that para 14 creates a rebuttable presumption in favour of grant of planning permission. Several judgments have established this:

Sales J Tewkesbury¹²⁴ paras 20, 49

¹²² CD 9.10

¹²³ CD 9.2 Appeal Decision in respect of Land between Station Road and Dudley Road, Honeybourne, Worcestershire (APP/H1840/A/12/2171339) (24 August 2012)

¹²⁴ CD 10.10

Parker J	<u>Colman</u> ¹²⁵	para 5
Lindblom J	<u>Bloor</u> ¹²⁶	para 44
Patterson J	<u>Dartford</u> ¹²⁷	para 52-54.

It will be noted that in the Dartford case the SofS was a defendant to a Local Planning Authority challenge to a permission issued by one of his Inspectors. His Counsel, Mr Honey, is reported at para 48 of the judgment as arguing against the interpretation of Davis - argued at that appeal by the Local Planning Authority and repeated by Cheshire East Council at this inquiry:

“The first defendant contends that the two stage test contended for by the claimant is misconceived”

- 6.42 It is clear that the SofS, despite arguing through Mr Maurici for the interpretation that he did in Davis, no longer wishes to suggest that para 14 involves a two stage test. The fact that the SofS expressly referred to the Dartford decision in the Droitwich decision letter (at para 12) puts the matter beyond (sensible) argument.¹²⁸
- 6.43 The Council's planning witness accepted that there is no vehicle within the Framework for separate assessment of sustainable development and the balancing exercise in para 14 itself would require all policies of the Framework to be considered – which is the obvious way to determine whether a development is sustainable or not. Paragraph 14 includes the requirement to consider the balance of how sustainable development is to be determined
- 6.44 The SofS is clearly not following the decision in Davis as evidenced by the Droitwich decision¹²⁹. The Inspector's Report says:

“8.19 Turning to the question as to whether the development is sustainable, given that Policies SR1 and GD2 are out of date and time expired I consider this development falls to be considered under paragraph 14 of the NPPF. The Inquiry heard argument from the Council that a strained interpretation of the paragraph 14 presumption should be applied. The Council stated that it relied upon the judgement of Mrs. Justice Lang in William Davis and other v Secretary of State for Communities and Local Government and others where the judge added an extra ‘gloss’ on paragraph 14 NPPF. At paragraph 37 of that judgment she ruled that a development must be found to be sustainable before the presumption applies.

8.20 In my view this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 does not support this view. The paragraph clearly relates to all ‘development proposals’ it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the ‘Lang’ interpretation there is no identified means of which sustainability can be assessed. Secondly, the

¹²⁵ CD 10.8

¹²⁶ CD 10.7

¹²⁷ HG 19

¹²⁸ SB 4 Appendix 2: Droitwich

¹²⁹ SB 4 Appendix 2: SofS Decision Letter and Inspector's Report for Droitwich

weight of High Court authority runs contrary to Lang J's view. The judgements at Stratford, Tewkesbury and North Devon demonstrate the correct reading of paragraph 14. Three High Court judges have disagreed with Lang J. Given this and the clear wording of paragraph 14, I consider that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14.

6.45 The SofS agreed with this analysis in his Decision Letter.

"12. Turning to the question as to whether the development is sustainable, the Secretary of State notes the arguments set out at IR8.19-8.20 in relation to the interpretation and application of the presumption under paragraph 14 of the Framework in the case of William Davis. The Secretary of State also notes the recent decision in Dartford Borough Council v. Secretary of State for Communities and Local Government and Landhold Capital Limited where Mrs. Justice Patterson rejected elevating William Davis to a formulaic sequential approach to paragraph 14 of the Framework. Like the Inspector, the Secretary of State finds the relevant policies for the supply of housing are out of date (IR8.24) and therefore the presumption applies, and that the evidence (IR8.21-8.23) demonstrates that the Appeal A scheme is sustainable in terms of economic, environmental and social benefits."

6.46 In conclusion on this point, the reliance upon Davis is an unnecessary diversion.

6.47 The presumption in favour of sustainable development does apply here because firstly, relevant policies of the development plan are out of date; and secondly, there is no 5 year supply of housing land. The Council's witness notes that

*"Whilst some relevant Development Plan policies are out of date (importantly Local Plan Policy RES.1 which gives the housing requirement figures for the period to 2011), other very relevant policies – NE.2, NE.4, NE.12 and RES.5 – are extant and up to date and I consider this in more detail below."*¹³⁰

6.48 The witness argued that the word "all" should be read into this phrase so that para 14 only applies if "all relevant policies are out of date". This cannot be right. It would involve an appellant having to identify each and every relevant policy (a finding which would doubtless be disputed by the Local Planning Authority). The operation of NPPF para 49 demonstrates that it is not necessary to allude to every relevant policy because if there is no 5 year supply then;

"Relevant policies for the supply of housing should not be considered to be up to date"

6.49 It is accepted that this means para 14 is put into play. It would be illogical if relevant policies other than housing being out of date should not have the same effect. It is also the fact that if the plan does not cater for housing beyond 2011 then its housing policies are obviously out of date on that basis too, irrespective of the 5 year position. The witness accepted that if it was found inappropriate to read into the wording of para 14 the word "all" before

¹³⁰ BH 1 para 5.13

“relevant policies” (which it obviously is not least because it is not there) then the presumption would apply in this case.

- 6.50 The recent Close Lane decision¹³¹ has established that NE.2 and RES.5 are out of date. The Council’s witness accepted that the BCNRLP was out of date in that there was no policy to direct where the annual 1,000 plus (minimum) houses required in the CELP from 2010 onwards should be located. It follows that, irrespective of what the 5 year supply provision is, the presumption in favour of sustainable development applies in this case.

Operation of NPPF para 14.

- 6.51 It is accepted that there are no “footnote 9” specific policies¹³² applicable in this case. Green Gap policy is not a “specific policy” in terms of footnote 9. This means that there is a presumption that permission should be granted unless the disadvantages of so doing clearly and demonstrably outweigh the benefits.
- 6.52 The disadvantages have been identified above by reference to the BCNRLP policies. To those must be added “Prematurity” which will be addressed below.
- 6.53 The benefits of the scheme are as set out in Mr Bell’s evidence¹³³. These are: the creation of up to 880 new dwellings, 30% affordable homes, specialist accommodation for the elderly, the development would be accessible to Crewe urban area with its jobs and services, employment opportunities during the construction stage and thereafter in the local services, the creation of a new community focus, provision of play space and other green infrastructure, opportunities for enhanced biodiversity, the opportunity for a highly attractive development, additional educational opportunities at primary school level and finally an estimated £1.5 million per annum New Homes Bonus income. These represent benefits over all three strands of sustainability.
- 6.54 It is worthwhile to look in particular at the delivery of Affordable Housing. The CELP Examiner has noted that the annual requirement for Affordable Housing in Cheshire East Council is 1,401. The CELP cannot deliver anything like that amount. In those circumstances delivery of over 200 Affordable Housing dwellings is a very substantial matter. A moment’s reflection of what these figures mean in real terms to those hundreds of people who are in inadequate accommodation and in desperate wait for a decent home is worthwhile. This decision has the potential to be truly life changing for them.
- 6.55 Prematurity is discussed more fully below but the key question is what harm to the CELP process would be caused by a grant of permission now? Much of the Council’s case has turned on the alleged inability of the CELP / Site Allocations process to create new Green Belt if permission were to be granted. Even if it were legally permissible to create new Green Belt, the Envision work has demonstrated that a width of 275m between Basford West – Shavington

¹³¹ Document HG 17

¹³² Footnote 9 at paragraph 14 of NPPF

¹³³ SB 1, p 115, para 16.13-16.15

is sufficiently wide for a new Green Belt. There is no reason, therefore, why the land left free from development could not be put in the Green Belt if Environ's / Cheshire East Council's approach were correct. As is argued below, it is not.

- 6.56 This is a proposal where the advantages are so substantial that they outweigh the disadvantages, most of which are inevitable disadvantages of development in the Crewe area (Policies NE.2, NE.12) and in so far as Green Gap is a constraint, it has been breached by other schemes when it suits the Council – for example at Crewe Green in the Crewe – Haslington Gap which, as is stated above, the 2003 Local Plan Inspector found to be a sensitive gap.
- 6.57 It is submitted that the proposal does represent sustainable development.

Is there a 5 year land supply?

- 6.58 The answer to this question is obvious to all but the Council. There is not a 5 year supply – as evidenced by three appeal decisions issued during July of this year; all of which confirmed that Cheshire East Council has no 5 year supply:

<i>Site</i>	<i>Hearing Date</i>	<i>Appeal Decision</i>
Dunnocksfold Road (<i>Doc GCS 2 Appendix 3</i>)	February 2014	14 July 2014
Audlem Road (<i>Doc HG 15</i>)	June 2014	25 July 2014
Close Lane (<i>Doc HG 17</i>)	May 2014	29 July 2014

- 6.59 To conclude whether a 5 year land supply exists it is necessary to consider the constituent parts of the assessment procedure: i) what is the full, objectively assessed need (FOAN), ii) what buffer should be applied, and iii) what is the correct supply figure?
- 6.60 Before embarking on that consideration it is helpful to note what is agreed. Firstly, the backlog is to be addressed using the "Sedgefield" method and not the "Liverpool" method, i.e. within the next five years, rather than spread out across the whole plan period (see Document CEC 14). Secondly, C2 figures are no longer to be included in the equation (CEC 16).

FOAN

- 6.61 The Council's case is set out in a matrix form in Document CEC 18 (b). It alleges that 1,180 is the FOAN and that it is only the economic adjustments which bring the figure up to 1,350 pa (averaged over the whole plan period). The Council bases its approach on its interpretation of Gallagher¹³⁴ and Hickinbottom J's reference to "policy off" and "policy on" and in particular his definition at para 37:

"(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is

¹³⁴ CD 10.4

the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a 'policy on' figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured."

It is said that this "policy on" process is equivalent to the "economic adjustments" made in the decision matrix prepared for the CELP.

- 6.62 This approach to the FOAN is wrong for the following reasons. The above quotation - para 37 (iii) - is *obiter dicta*: it does not form part of the decision making process on this ground. Hickinbottom J expressly purported to be following, as he was obliged to, the Court of Appeal decision in Hunston¹³⁵. That decision does not make a "policy off" or "policy on" distinction. Hunston simply says at para 25 that adjustment needs to be made to the FOAN, made necessary by footnote 9 policies or other policies in the Framework.

"... That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure."

The Court of Appeal decision therefore envisages a reduction and not an increase through the operation of "policies set out in this Framework". Within the section of his judgement dealing with FOAN Hickinbottom J repeatedly refers to the operation of para 47 in the context of constraints (see paras 94, 99) despite what he refers to at para 37 (iii).

- 6.63 The full objectively assessed need ought to represent the full extent of what any Local Planning Authority intends to deliver by way of housing supply. That will be based on a wide range of factors, including: demographic projections, local vacancy figures, second homes, Affordable Housing needs, economic aspirations, migration (in or out), economic signals and Strategic Housing Market Assessment (SHMAA) data. This is not a complete list of factors which need to be brought into consideration. When all factors have been addressed, this figure will represent the FOAN. The flaw in the Council's analysis is that it gives special status to just one element, namely economic growth: there is no justification within the text of NPPF for treating this as a separate process, the Council's witness accepted.

- 6.64 It is the FOAN figure which must then be checked against policies in NPPF. The Court of Appeal describe what went wrong in Hunston:

*"I have some sympathy for the inspector, who was seeking to interpret policies which were at best ambiguous when dealing with the situation which existed here, but it seems to me to have been mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure."*¹³⁶

¹³⁵ CD 10.2

¹³⁶ CD 10.2 at para 26

In this case the Council does not propose to reduce the FOAN figure having regard to NPPF policies but to increase it. The Court of Appeal decision makes clear that this secondary process can only serve to “constrain” the figure.

- 6.65 Para 8.8 of the reasoned justification to Policy PG 1 of CELP describes the additional 27,000 dwellings as meeting “the full objectively assessed needs”. In that declaration of what is the FOAN (which is now resiled from for 5 year supply reasons) the Council regards jobs growth as part of that process

*“As a minimum, the Plan aims to meet the full objectively assessed need for an additional 27,000 dwellings that is predicted to arise in Cheshire East over the 2010-2030 period. This need is based on forecasting work using the latest Government projections and also factors in the Council’s aspirations for employment led growth, which seeks to deliver additional housing to enable a rate of jobs growth that averages 0.4% a year. ...”*¹³⁷

At this inquiry, the Council did not wish to abide by that statement, so as to avoid the consequences of admitting 27,000 is the FOAN in the context of a 5 year supply calculation at appeals such as this.

- 6.66 It is noted that the Close Lane Inspector¹³⁸ declined to use the 1,350 figure because (a) it “has not yet been tested at a Public Inquiry” (para 31); (b) RS figures are “the only housing figures which have been subject to public scrutiny” (para 32); and (c) “The 2011 based Interim Housing Projections, projected forward to 2030, indicate that an average annual increase in dwellings of 1,180 over the plan period. This is not dissimilar to the figure of 1,150 in the RS. As such, despite the appellant’s concerns, I consider that the figure of 1,150 is representative of the objectively assessed housing needs within CEC at the present time...”
- 6.67 This analysis falls into conflict with Hunston in the following ways – following each of the three steps above. Firstly, for development control purposes an Inspector at a s.78 appeal must arrive at a FOAN in the absence of the Local Plan process even though it will not have been objectively assessed other than by the Inspector carrying out the necessary development control role. This is the finding of Hunston para 26, and Gallagher para 88(ii). Therefore the fact that the 1,350 figure has not been tested at CELP Examination is not of itself relevant. It is correct that the RS figures were subject to public scrutiny but that does not obviate the requirement to calculate the FOAN in 2014.
- 6.68 The Household Projections are only part of the FOAN exercise as the Council’s own evidence at this inquiry accepted:

*“This clearly suggests that objectively assessed need will not be too far from the household projections and may indeed be one and the same (albeit not automatically so). It does not suggest that the ‘elaborate’ processes associated with Local Plan housing requirements (such as economic modelling, market indicators and such like) are associated with such calculations.”*¹³⁹

¹³⁷ CD6.1, page 61

¹³⁸ HG 17

¹³⁹ GCS 1, para 6.19

Furthermore, the figure put before the CELP Examiner is the Council's case as to what the FOAN is. Others believe the FOAN is higher and that will be tested at the CELP Examination.

- 6.69 In conclusion on this point, the correct FOAN is at least 1,350 dpa until such time as the Local Plan Examiner reports, potentially with a higher figure. The thought process of the Audlem Road Inspector at para 34-36 is correct (save that the minimum figure of 1,260 is based on an as yet untested "stepping" policy). The Appeal Decision for land North of Moorfields (Document HG 24) also concludes that the FOAN is 1,350¹⁴⁰.
- 6.70 As advised by the Town and Country Planning Association, when calculating the housing need, it is necessary to go back to apply the 2008 household projections, and not simply carry forward the 2011 as the 2011 figures reflect a period of economic recession; the 2008 figures are a better reflection of economic prosperity and would balance the 'trough' of 2008 against previous 'peaks'.¹⁴¹
- 6.71 If 1,350 is the FOAN then the Council accept they have no 5 year supply. The overall summary table shows that if 1,350 dpa is used then the 5 year requirement is 10,146 if a 5% buffer is seen to be appropriate, or 11,596 if a 20% buffer is applied. The Council's highest supply figure is 9,652.¹⁴² Therefore, there is no 5 year supply even if 5% buffer is used and the Council's supply figure is used without any reduction.

What buffer should be applied?

- 6.72 The buffer does not represent a penalty, nor does it impose additional housing requirements. It simply requires that housing should be "moved forward from later in the plan period." Whether there has been a "record of persistent under delivery" is a finding of fact that needs to be made. Nearly all findings of fact in previous decisions (including the SofS's at Abbey Road) have found 20% buffer to be appropriate.
- 6.73 The Council places much reliance upon the PPG and its reference to peaks and troughs. The following four decisions have addressed the issue of the correct buffer since PPG was issued:

Elworth Hall Farm	CD 9.5
Dunnocksfold Road	SB 4 App 7
144 Audlem Road	HG15
Close Lane	HG17

All of these Appeal Decisions addressed the PPG. Elworth Hall Farm, which was the first, expressly refers to PPG at para 22. All have decided that 20% was the correct buffer except Dunnocksfold Road. The Inspector's thought process in that appeal is explained at paras 49-53. At para 52 she observed

¹⁴⁰ HG24, para 22

¹⁴¹ HG 09 "New estimates of housing demand and need in England 2011-2031"

¹⁴² CEC 14

"I consider the current undersupply should be considered alongside the historic and cumulative robust long term record of delivery."

- 6.74 However, this observation is contradicted by the facts. The CELP Inspector sets out the facts in his letter to the Council at para 1 (a) (v)¹⁴³

"The 2012 AMR indicates that an average of 1,032 dwellings were completed between 2002-2012, compared with the former RSS requirement of 1,150/yr; ..."

The long term record is therefore far from "robust" – it is a record of under supply even during the peak years following 2002.

- 6.75 The Dunnocksfold Road Inspector referred to improvements in recent years but consideration of the Council's updated position statement on completions 25th July 2014¹⁴⁴ shows that the figures have not increased to even RS levels. In 2013-14 there was a deficit of -487, and in 2012-13 there was a deficit of -498. Given this history of performance, the appropriate buffer is 20%.

What is the supply figure?

- 6.76 The Inspector in the Close Lane decision undertook a very detailed analysis of supply indeed from paragraphs 49-84. In these 8 pages of detailed analysis she explains why the supply figure is only 6,534 excluding student dwellings. Mr Bell (the appellant's witness) has updated this figure having regard to recent permissions issued and other factors, and considered that the update figure would still be well below his own 7,903 which has convinced him that his estimate is very robust.

- 6.77 The Council's approach is far removed from the interactive role between local planning authorities and the development industry which is promoted in PPG.¹⁴⁵ The Council's witness criticised the house building industry for failing to agree the Council's figures, but it was the Council which moved the goalposts. It moved away from the position in the 2012 SHLAA to when it started losing appeals by reason of absence of a 5 year supply. By the simple expedient of reducing lead-in times, and presuming there would be more than one developer on the site, it could dramatically increase supply on paper (but not in reality). This process was noted and inherently disapproved of in the Abbey Road decision.¹⁴⁶

"28. ... The Secretary of State is also not persuaded by the evidence submitted to him that the Housing Market Partnership has endorsed the methodology and conclusions of the updated SHLAA. This further undermines his confidence in the updated SHLAA findings. Having considered these matters very carefully, the Secretary of State is of the view that the Council has not demonstrated a 5 year supply of deliverable housing sites against even the most favourable assessment of the 5 year housing requirement. The Secretary of State finds this a factor weighing in support of the proposed development."

¹⁴³ SB 4 Appendix 5

¹⁴⁴ CEC 16

¹⁴⁵ see PPG 3 - 023

¹⁴⁶ CD 9.1. Note that at this Inquiry CEC alleged it has a supply of 9,771 dwellings

- 6.78 The process was taken further by the Council in its Housing Position Statement which was considered and rejected in the Elmworth Hall Farm decision.¹⁴⁷ The Close Lane Inspector (para 59) also expresses concern about CEC's approach:

"59. Although it would appear that the Council's approach set out in its Position Statement accords with the guidance in the PPG in that it includes indicative lead-in times and build out rates for the development of different scales of sites and makes an allowance on the largest sites for several developers to be involved, I am concerned that, on the basis of the evidence before me, these figures are not supported by local evidence of past lead-in times and build out rates or on substantial evidence of the involvement of 2 or more developers on larger sites, or by the experience of the local housebuilding industry. Indeed, in my opinion, they would appear to be a little over optimistic. Indeed, I consider that the lead-in times and build rates, put forward by the appellants would more accurately reflect past trends and those anticipated by the housebuilding industry. Furthermore, I concur with the appellants' view that the inclusion of a higher build rate to reflect the presence of 2 or more developers on a site should only be applied where there is substantial evidence that this would be the case."

- 6.79 The full details of the appellants' case is set out in the evidence and within the boxes in the relevant tables. The overall conclusion which the SofS is invited to reach is one shared by every Inspector who has had to determine a contested 5 year housing land supply: the Council is exaggerating its supply. At Close Lane the Inspector found the difference between what she found to be the supply (6,534) was not hundreds but thousands below what the Council alleged it to be. For the purpose of this Inquiry Mr Bell's figure of 7,903 is robust and conservative. Sniping at findings at particular sites simply avoids the big picture: an exercise such as this must take a balanced view and Mr Bell has said he has followed the approach previously agreed in the SHLAA process.

Conclusion on 5 Year Supply

- 6.80 The table at HG 13 demonstrates that the Council has a supply of between 3.4 (20%) to 3.9 (5%) year's supply of available housing land. The Close Lane Inspector found it to be 3.45 years¹⁴⁸ even when using the FOAN figure of 1,150. This being so, the presumption in favour of development is created in this case.

Free Flow of Traffic on the Highway Network

- 6.81 On this issue, as in others, The Council has applied different standards for the appeal scheme, than the standards it uses to gauge acceptability in relation to the CELP sites.
- 6.82 It is alleged that this proposal will cause unacceptable delays so as to be "severe" in terms of para 32 of NPPF. When the Junction Delay Plots in Appendix C of the Transport Models Review¹⁴⁹ are studied it is apparent that

¹⁴⁷ CD 9.5

¹⁴⁸ HG 17 para 84

¹⁴⁹ CD 11.21 and CD 11.22: Cheshire East Transport Models Review – Summary Highway Impacts and Mitigation Proposals for Local Plan Strategy. May 2014

the Council is content for the purposes of its CELP to consider a 5 minute delay "broadly acceptable":

*"The residual impact on the highway network with the mitigation in place is considered to be broadly acceptable."*¹⁵⁰

The delays referred to are colour coded. A delay of 30-120 seconds is coded green and 120-300 sec delay is orange. Only delays above 300 seconds (5 minutes) go into the red colours.

6.83 Even if the Council relies on the figures produced in their highway witness's Rebuttal at Tables 1 to 8 (Document GM 4) the maximum delay on one arm of either Junction 4 or Junction 5 in only 185 seconds (Table 8). Most of the delays are less than 120 seconds, i.e. still "green".

6.84 It is clear that, based on the standards against which the Council wishes to test its emerging CELP sites, as set out in CDs 11.21 and 11.22, the appeal proposal does not have unacceptable consequences on the highway network. These studies place particular importance on the performance of "key junctions."¹⁵¹ If that is a suitable touchstone, not only is the impact of this development not "severe" it is at least "broadly acceptable". It is probably better than "broadly acceptable" because Junctions 4 and 5 exhibit delays which are mostly within "green" as assessed by the Council.

6.85 This putative reason for refusal should never have been raised or maintained, which helps to explain the obfuscation and evasion which is subject of separate complaint in the costs application. The Council has not satisfied its duty under para 187 of NPPF at all. This expects

"Local planning authorities should look for solutions rather than problems, and decision makers at every level should seek to approve applications for sustainable development where possible. Local planning Authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."

In this appeal the Council has taken the opposite course and looked for problems. Examples of this approach are noted below.

6.86 The Council has raised a persistent complaint about use of the transport model and the appellant's witness's over reliance upon it. This contrasts with CD 11.21 (part of the evidence base of the CELP) at page 8 where it is said:

"The 2006 base highway model was used to run the tests in order to be consistent with previous assessments. It should be noted that analysis of traffic count data collected between 2004 and 2013 indicates that there has been limited growth in traffic. The 2006 base model therefore adequately reflects the current situation."

6.87 At the inquiry the Council sought to rely upon the video evidence showing existing traffic conditions. This is contradictory of the guidelines set out in its

¹⁵⁰ CD 11.21 page 13

¹⁵¹ CD 11.21 page 12

own documentation which require planned infrastructure improvements to be taken into account¹⁵².

"... It is important to note that this 'do minimum' situation will therefore usually include improvements to the network compared to the existing situation. This 'do minimum' position is the appropriate position to compare the impact of the developments to, as these improvements would have happened regardless of any other considerations. ..."

This is another example of the flawed approach taken by the Council in assessing the traffic implications of the proposed scheme.

- 6.88 Junction 5 is alleged to be a "problem" location (A534 Nantwich Road / A5019 Mill Street / B5071 South Street) and yet tests on this junction show no problems at all, or any other junctions in traffic from South Crewe / Rope – see Table 5.1 CD 11.22 p 28. In Option 6¹⁵³ - which is characterised as "destruction testing" of the highway network in Crewe – this assumes a total of 2,391 new dwellings¹⁵⁴ concentrated to the south of Crewe with traffic coming through Junction 5. However, whilst other junctions around it are all noted as "red", Junction 5 remains green. If this is so, then why should it now be argued that Junction 4 would "collapse" were the appeal scheme to go ahead?
- 6.89 The Council's letter¹⁵⁵ in response to queries raised by the appellants in Document HG 08 is a further example of evasion of the simple truths contained in CD 11.21 and CD 11.22. That is, the letter does not accept, or even acknowledge, that a delay of up to 300 seconds is factored into the local plan transport modelling as being acceptable.
- 6.90 The appellant's witness was criticised for not reality checking his work to 2030, only doing so to 2015. He says the 2015 test is justified because at that date all traffic from the site is put onto the network. This approach is acceptable on a trunk road and should be here, too

*"27. Where the overall forecast demand at the time of opening of the development can be accommodated by the existing infrastructure, further capacity mitigation will not be sought."*¹⁵⁶

Even if that approach were not acceptable, the Council has itself carried out forecasts to 2030.

"As noted previously patterns of movement are established for the existing situation 'base year' and for one or more future years 'forecast years'. In this case a year

¹⁵² CD 11.21 page 3

¹⁵³ CD 11.21 Table 2.1 page 3

¹⁵⁴ 370 dwellings at site Ref.3 – Basford West; 300 dwellings at Site Ref.9 – Shavington East; 360 dwellings at Site Ref. 10 Shavington Triangle; 1,361 dwellings at Site Ref. 11 – South Crewe – Rope – see CD 11.22 Table 2.1 page 3.

¹⁵⁵ CEC 33

¹⁵⁶ HG 04 para 27

*close to the final year of the Local Plan (2030) has typically been used for the forecasts.*¹⁵⁷

- 6.91 Junction 4 is not a key junction in the Council's testing, and the appellant's witness has said more traffic would pass through that junction than Junction 5 - which is a key junction. Be that as it may, the s.106 unilateral undertaking offers a contribution of £250,000 towards new traffic lights. These will, it is accepted, cause some new delay but will improve the overall operation of the junction. The undertaking also allows the offered money to be spent on alternative traffic management measures to improve flow through this junction if traffic lights are not seen to be the preferred solution. Whether the Council chooses to do the work is a matter for them. It is the appellant's contention that there is a workable solution to any problem that may arise at this junction.
- 6.92 The Council's view is that traffic from south of Crewe creates insoluble problems at Junction 4. However, can this be right? Why did this not come up in the models for the CELP? Why were no solutions sought for such supposed problems? If there were to be such problems then Crewe would be "closed for business" for any development to the south.
- 6.93 The s.106 package is intended to address and mitigate the impacts. It has been confirmed through the Council's CIL Regulations Compliance Statement (Document CEC 23) that the £955,000 offered for improvements to Crewe Green Roundabout is now regarded as necessary and CIL compliant.
- 6.94 This proposed development, together with its package of mitigations, will not cause unacceptable delays, still less severe delays on the adjacent highway system.

Prematurity

- 6.95 The Council's case on prematurity essentially rests on two points: firstly, 880 is an excessively large amount of dwellings to come forward outside of the development plan process, and secondly that release of the site would prejudice consideration of the site for inclusion in the Green Belt.

880 too much?

- 6.96 The SofS decisions at Bishops Cleeve (two sites totalling 1,000) and more recently at Droitwich¹⁵⁸ (two sites totalling 700 plus 200 bed care homes) demonstrate there is no upper limit to releases outside of the development plan process. Males J explained in Tewkesbury¹⁵⁹ why local planning authorities who do not have a 5 year supply should not be surprised if such releases occur:

"64. In my judgement these matters are capable of being read together as a coherent whole. They demonstrate that, for the future, development plans prepared by local planning authorities in accordance with the national policy principles set out

¹⁵⁷ CD 11.21 page 2

¹⁵⁸ SB 4, Appendix 2

¹⁵⁹ CD 10.10

in the NPPF, including the provision of a five year housing land supply, will represent the starting point for consideration of planning applications, and that it may well be difficult to obtain permission for developments which are not in accordance with such plans. However, they do not suggest that greater weight should be accorded to the views of local authorities who do not have such a development plan (or during the one transitional period, a development plan produced in accordance with the PCPA 2004) over and above whatever weight would be appropriate pursuant to the long established prematurity principle. Nor do they cast any doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to be dealt with, where appropriate by the Secretary of State, applying existing principles.

- 6.97 HIMOR Group (the appellants in this case) has objected to the inclusion of some of the sites in the submitted CELP. However, HIMOR and others suggest that 27,000 new dwellings is insufficient by way of allocation and the figure should be higher by thousands. If these objections prove to be correct then the Council will need to seek additional sites. Crewe could be the starting point for identifying locations for such additional sites given the emphasis on its growth and the fact it is a major town in east Cheshire.
- 6.98 In any event, the Framework promotes the boosting of housing delivery and if it is found (as other Inspectors have) that the Council has no 5 year supply it follows that there is a need for additional supply now.

Green Belt

- 6.99 To argue prematurity on the grounds that the site is within an area identified as potentially being included in the Green Belt is completely misconceived for a variety of reasons. The CELP will not allocate Green Belt land, it only seeks to establish the principle of creation of new Green Belt. The CELP will only be able to do so if the Examiner is satisfied that exceptional circumstances justifying the creation of new Green Belt exist.
- 6.100 The test of necessity is critical here: why is it necessary to have Green Belt now? The Council's future aspirations are somewhat schizophrenic. The map showing the area for search for the new Green Belt in the CELP¹⁶⁰ at page 73 clashes with the map at page 42 of Cheshire and Warrington Matters: A Strategic and Economic Plan for Cheshire and Warrington¹⁶¹, which shows an expanding Crewe, and the supporting text boasts

"Unconstrained land for growth - both homes and employment"

If the whole Green Belt Area of Search as promoted in CELP became Green Belt Crewe would effectively be straightjacketed against future development to the south, east and west by Green Belt. The Council cannot ride horses going in opposite directions at the same time.

- 6.101 In any event, the actual identification of Green Belt will not take place until the Site Allocations document is adopted. That process will not be commenced until after the CELP is adopted in (perhaps) September 2015. In

¹⁶⁰ CD 6.1

¹⁶¹ CD 6.15

which case, the Site Allocations plan is too far off to be prejudiced by this proposal.

- 6.102 The Envision Study which put forward the suggested expansion of Green Belt expressly advises at 5.1.5 and 5.1.6 of the study¹⁶² that the existing narrow gaps between Crewe and Shavington are adequate for Green Belt purposes. Whilst it is accepted that the Green Belt could be extended further to the south in some locations, the gap between existing built development at Shavington and proposed development at Basford West (270 m) cannot be increased. The text says that this gap is wide enough for Green Belt purposes. If that is so, Mr Reid's Plan 3¹⁶³ demonstrates that a similar or wider gap can be maintained elsewhere. If planning permission is granted the allotments shown in the Masterplan (Inquiry Plan A.12) could be included within the Green Belt and a new Green Belt boundary produced if necessary.
- 6.103 If the area of search¹⁶⁴ for Green Belt is compared with the development sites map (Document HG 7) it becomes clear that the Council is proposing development, or granting development, at not less than four locations within the proposed Green Belt Area of Search: Sydney Road, Crewe Green (which is also in a Green Gap), Shavington Triangle and East Shavington. This is excused on the basis that these are the Council's preferred sites in an as yet untested plan.
- 6.104 Finally, there is the example of Kingsley Fields, a 1,100 dwelling development where Nantwich Town Council argued the scheme was premature.¹⁶⁵ Not only did Cheshire East Council not refuse that proposal on the ground of prematurity, the Committee Report did not even address the topic of prematurity. This is seen as a display of double standards.
- 6.105 The appeal scheme is an appropriate, necessary and a timely opportunity to address a continuing shortfall in Cheshire East's 5 year housing land supply. The allegation of prematurity is not made out on either of the two bases discussed above.

Additional matters raised by interested persons

- 6.106 A written response has been provided to matters raised by interested persons, both at the inquiry and in the written representations.¹⁶⁶ For the most part, these objections were not supported by relevant statutory consultees. In some other instances the objectors are simply unaware of the details of the proposal. There is no justification for elevating any of these matters to main issues and such matters as have been raised should not prevent grant of planning permission.

¹⁶² CD 7.5

¹⁶³ IR 3

¹⁶⁴ CD 6.1 page 73 Fig. 8.2

¹⁶⁵ HG 20

¹⁶⁶ HG 21

Overall Conclusions on the Appellant's Case

6.107 This proposal enjoys the benefit in favour of grant of permission created by paragraph 14 of NPPF whether or not there is a 5 year land supply. There is no sound reason for withholding planning permission. If the SofS concludes that there is no 5 year supply, the case for release of necessary housing becomes compelling.

7. POINTS RAISED BY INTERESTED PERSONS

- 7.1 Below are additional points raised by interested persons at the inquiry.
- 7.2 Concern was expressed over the purpose of Mr Boles's letter, addressed to the Planning Inspector. Housing figures should be examined and endorsed through the local plan process; it should not be the role of this planning inquiry to establish housing growth figures. The letter is seen as an unwelcome intervention in the process. There is a fear that the letter was written to bias the Inspector in favour of supporting development.
- 7.3 The Green Gap is a lung for the area and it should not be narrowed or reduced simply to the road corridor of the A500.
- 7.4 This is not one of the preferred sites in the emerging Local Plan. The Local Plan is being drawn up by local elected representatives and it should not be overruled through the appeal process. This is a very unpopular proposal locally; all local residents are opposed to it. Building in the Green Gap between Crewe and Shavington would create a continuous sprawl, especially if seen together with other developments in this area. It would overpower and destroy the existing village character of Shavington. The village would become more urban in character. If this scheme is allowed, it will be harder to resist increments, and the creation of an additional access on to Crewe Road.
- 7.5 The local roads are only narrow lanes and there should be no additional traffic, which would lead to insurmountable problems of gaining access into Crewe. There are long delays at present, particularly along Gresty Lane at Gresty Bridge and northwards to Mill Lane and South Street. Ideally, the bridge over the railway at Station Top needs to be widened to carry the greater traffic flows along the Nantwich Road corridor. However, this would cost some £10 million and could not be funded by this proposed scheme.
- 7.6 The additional traffic would increase the risk of accidents on the local roads, especially between vehicles and pedestrians on the narrow lanes, many of which do not have adequate footways. Pinch points on the carriageways often require vehicles to mount the footways so as to pass each other, which could put children walking to school at risk of injury. The risk would be all the greater if families on the proposed development took their children to school by car; thereby adding to the congestion and the chance of conflicting movements on the roads. Ideally the carriageways should be 6.7m wide to cope with the anticipated levels of traffic; here the lanes are in the order of 5m wide, or even narrower in places, such as 4m where Gresty Lane crosses Swill Brook.

- 7.7 The diversion of Crewe Road through the proposed development would bring heavy goods vehicles (HGVs) through the new housing areas, which would not represent an attractive situation for the residents. Also, the proposed new junction on Crewe Road might not represent the easiest or safest design to accommodate private cars and the turning movements of HGVs.
- 7.8 Installing additional traffic lights on Rope Lane close to the existing lights at the bridge over the railway would lead to confusion and congestion. There ought to be a Pelican crossing over Rope Lane to link the proposed scheme with the schools on the opposite side of Rope Lane. Reducing speed limits would contribute to improving safety for pedestrians.
- 7.9 Additional traffic would add to air pollution.
- 7.10 Swill Brook runs across the site and into housing areas to the north, including through domestic gardens. Maintenance of the watercourse is a continuing problem for local residents, especially where the Environment Agency has limited resources to dedicate to this work. The river has flooded over local gardens in the past and some houses nearby are at risk of being inundated at times of high flood levels. There is concern that the proposed drainage and flood attenuation measures will not be effective. However, it is accepted that, subject to planning conditions, adequate safeguards could be put in place.
- 7.11 Services and utilities in the local area are at capacity at the moment and it is doubted if enhancements will come forward in time to serve the additional houses.
- 7.12 The proposed primary school should have its own directly associated parking area, which would not require parents to park on the roads. Also, the playing field ought to be more closely related to the school buildings.

8. WRITTEN REPRESENTATIONS

- 8.1 Further points are noted below which were raised in the written representations.
- 8.2 The site is Green Belt land. Brownfield land should be taken for development before green field sites such as this.
- 8.3 Local wildlife will be disturbed, including bats, owls, birds of prey, Great Crested Newts, badgers and foxes.
- 8.4 The site is within a flood plain and is regularly flooded by Swill Brook. This, in itself, makes the site inappropriate for built development. Hard surfaces within the new development will only make the situation worse, preventing absorption of surface water and directing it into overloaded watercourses.
- 8.5 There is a need to retain land for food production.
- 8.6 The construction works will bring noise, mud and dust to existing local residents.
- 8.7 The scheme will exacerbate problems of finding parking spaces at local centres and in Crewe town centre.

- 8.8 There is no need for a retirement village – there is more than enough accommodation for elderly persons in the locality.
- 8.9 A new pub on the site is unlikely to be either necessary or viable.

9. CONDITIONS AND OBLIGATIONS

Planning Conditions

- 9.1. In the event that the appeal is to be allowed, it will be necessary to attach planning conditions to the permission. Suggested conditions were discussed at the inquiry and an agreed list of draft conditions was submitted.¹⁶⁷ I comment on the suggested conditions below, bearing in mind the advice and guidance contained in paragraph 206 of NPPF and Section 21a of PPG - *Use of Conditions*.
- 9.2. A list of recommended conditions is included as an Appendix to this Report. The list represents my considered conclusions on the suggested scope and wording of the suggested conditions aired at the inquiry.
- 9.3. It is necessary to attach conditions establishing the timescale for the commencement of development and the submission of details for subsequent approval (Conditions 1-3). It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 4).
- 9.4. The development is proposed to be constructed as a number of phases. It is necessary to ensure that the details of the development for each phase and the timing of implementation of such matters as landscaping in each phase are specifically considered to ensure a high standard of development (Conditions 5-7). In the interests of ensuring a high quality design and maximising sustainability, smaller details of the location and materials for the construction of walls and fences for the houses, and facilities for the management of domestic waste should be considered as integral to the design of the development (Conditions 37-38).
- 9.5. To ensure that properties both on the application site and in the neighbouring areas are properly protected from the risk of flooding from Swill Brook it is necessary to require prior consideration and approval of design details for surface water drainage and foul drainage, as well as finished floor levels for the buildings on the application site (Conditions 8-11).
- 9.6. It is possible that parts of the site have been subject to contamination in the past. In which case, it is necessary to require a scheme of investigation to be carried out prior to the commencement of development in any phase, and that appropriate remediation is carried out before any of the buildings are occupied (Condition 12). In the same vein, previous use of the site may have left archaeological evidence which should be identified, noted and properly recorded before construction works commence (Condition 27).

¹⁶⁷ Document HG 16

- 9.7. The site can be approached *via* roads which pass through established residential areas, and construction works on the site have the potential to disturb existing residents, or new residents of the scheme as each phase is successively completed. It is therefore reasonable to require compliance with a Construction Environmental Management Plan (Condition 13).
- 9.8. In order to encourage use of sustainable modes of transport, and to minimise the use of private cars, it is reasonable to require the submission of Travel Plans both for the residential elements of the scheme and for the commercial/business elements. Similarly, it is appropriate to facilitate and encourage the use of electric vehicles to minimise use of fossil fuels for transport. To encourage and facilitate safe walking and cycling, details of footpaths and cycle routes and associated signage should be subject to prior approval (Conditions 14-16, 31-32).
- 9.9. Local residents and businesses, both in the vicinity of the site and on the site as development progresses across the various phases, should be safeguarded from the risk of harm to their quality of life by reason of poor air quality and disturbance from excessive noise. It is reasonable to require the development to proceed in accordance with appropriate protocols (Condition 17).
- 9.10. The site is largely undeveloped countryside at present and there is the likelihood of wildlife interest on the site, notably along the course of Swill Brook, the marl pit ponds and in the hedgerows. In order to minimise the loss of such ecological interest and to safeguard and retain as much as possible, it is necessary to require details of schemes for works which would affect such interests to be submitted to the local planning authority for approval in detail (conditions 18-22).
- 9.11. The scheme has been promoted on the basis that it would include a significant amount of open space, retained trees and hedgerows, and new landscaping planting. To ensure that proper safeguards are included for the trees and hedges to be retained, and that new planting is carried out in accordance with an agreed programme and schedule of species, it is necessary to require prior approval of detailed working practices and planting regimes for these aspects of the development, together with a programme for the creation and laying out of the amenity area, allotments and play spaces (Conditions 23-26).
- 9.12. To ensure that the shopping centre remains as a local facility, in proportion to the development which it is intended to serve and not impinging upon the vitality and viability of other retail developments in the locality, it is necessary to impose an upper limit on the amount of retail floor space (Condition 36). The proposed commercial premises have the potential to be disturbing to those who occupy the houses near to these uses. It is necessary therefore to establish limits for noise emissions, smells and external lighting, to safeguard the living conditions of local residents (Conditions 33-35).
- 9.13. Only the main access arrangements for the development are submitted for approval at this stage. In which case, in order to ensure that the development is carried out in accordance with current standards of highway design and safety, it is necessary to require the submission of details of the construction of the access points (Condition 28). In order to minimise the risk of generating excessive traffic through junctions in the centre of Crewe, it is

necessary to impose thresholds on the extent of occupation of the site until particular strategic elements progress of wider highway network, as well access points into the site itself, have been completed and brought into use (Conditions 29-30).

Planning Obligations

- 9.14. Two planning obligations have been submitted, made under Section 106 of the Town and Country Planning Act 1990; one is a planning agreement (Document HG 29), the other a unilateral undertaking (document HG 30).
- 9.15. The planning obligations need to be assessed against the tests set out at paragraph 204 of NPPF.

Planning agreement

- 9.16. The Agreement offers funding for affordable housing, primary education and open space/recreation provision. These are matters which are directly related to the development being proposed and are necessary to make the development acceptable in planning terms. Indeed having regard to the offered contributions for education provision and recreation provision, this directly corresponds with what is being proposed in the planning application.
- 9.17. The Council's Compliance Statement (Document CEC 23) and subsequent correspondence (CEC 34) explain in detail what the development plan policy context is for requiring such contributions, and gives a justification for the amount being offered. The sums being put forward for the various elements are seen to be fairly and reasonably related in scale and kind to the development, by reference to the Council's published policies and standards on the proportion of affordable housing, costing of education provision and amount of recreation space for a new residential development. It is clear what the offered contributions would be used for.

Unilateral undertaking

- 9.18. The unilateral undertaking proposes six financial contributions. Again, the Council's Compliance Statement addresses the relevance, need and scale of the offered contributions having regard to what is being proposed in the planning application and the likely implications of the scheme.
- 9.19. Four elements of the undertaking relate to off-site highway improvements; either physical works or traffic regulation orders. £590,000 is offered for works to Cheerbrook Roundabout and £955,000 for works to Crewe Green Roundabout¹⁶⁸. The Cheerbrook Roundabout is to the west of the appeal site, where the A500 and A51 meet. This is part of the A51 corridor, where the transport modelling says traffic from the appeal site would exacerbate present delays at peak periods. Similarly, the appeal scheme would add to the traffic using the already heavily used Crewe Green Roundabout, to the east of the appeal site where the A534 and A5020 join. The offered contributions are therefore put forward as funding for amelioration to take account of the additional traffic generated by the appeal scheme over and above the

¹⁶⁸ See Plan Insp.2

- alterations to these junctions planned to accommodate the traffic impact associated with the growth allowed for in CELP.
- 9.20. In the same spirit of amelioration or mitigation, £15,000 is offered to fund the costs of promoting a traffic management scheme on Crewe Road, to address any possible highway safety implications of increased traffic in the vicinity of the appeal site. This could include a Traffic Regulation Order to reduce the present speed limit of 40mph.
- 9.21. £250,000 is offered for improvements to the South Street /Catherine Street / Gresty Road junction (Junction 4). The Council dispute whether any works are possible to this junction which would achieve a satisfactory amelioration for the additional delays which it says would be generated by the appeal scheme. Indeed, the Council's Compliance Statement does not address this aspect of the offered contributions. Nevertheless, the sum is offered to be used flexibly; either for the installation of traffic lights, or any other measures which are likely to lead to an improvement.
- 9.22. In order to encourage use of alternatives to the private car for journeys, the undertaking offers a £150,000 annual subsidy for a bus service for the first 5 years of the development, as well as £80,000 towards the costs of supporting sustainable transport. Suggested Conditions 14 and 15 require the submission of Travel Plans for residential and commercial development on the scheme
- 9.23. If it is not possible to implement or enforce any of the elements of the offered contributions (in particular the £250,000 for the South Street/Catherine Street/Gresty Road junction – Junction 4), Clause 6.2 of the undertaking confirms that such a failure will not invalidate any other provisions of the undertaking.
- 9.24. Although the Council is unwilling to accept that the £250,000 offered for improvements to Junction 4 is appropriate, the evidence at the inquiry was that whereas the proposed scheme would be likely to exacerbate the current (or modelled) delays at this junction, some works would bring forward an improvement were the junction to be left as it is. If the Secretary of State accepts that this would be so, then all of the elements of the offered undertaking can be regarded as meeting the three tests of NPPF paragraph 204.
- 9.25. If the Secretary of State does not consider that the £250,000 contribution for works to Junction 4 is necessary to make the development acceptable in planning terms, then Clause 3.3 of the undertaking states that excluding this would not negate the other elements of the offered undertaking.

10. CONCLUSIONS

Main Considerations

- 10.1 Taking into account the putative reasons for refusal, the evidence given at the inquiry and the written representations, there are four main considerations to be addressed in this appeal. These are:
1. Whether the proposed scheme would fulfil the three roles for sustainable development identified at paragraph 7 of the National Planning Policy Framework; in particular, having regard to the development plan policies relating to intrusions into a Green Gap, loss of countryside, loss of best and most versatile agricultural land and loss of ancient hedgerows.
 2. Whether there is a 5 year housing land supply in the local authority area and how this may impinge upon the applicability of current development plan policies.
 3. The effect of the proposed development on the free flow of traffic on the surrounding road network.
 4. Whether a grant of planning permission for the proposed scheme would unacceptably prejudice the preparation and adoption of the emerging Local Plan, with particular regard to distribution of housing sites and identification of a Green Belt extension.
- 10.2 Each of these main considerations is discussed in turn below. The numbers in square brackets [*n.nn*] are references to preceding paragraphs in this Report.

Introduction

- 10.3 As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and acknowledged at paragraphs 11, 12 and 196 of NPPF, the starting point for determination of this appeal is to consider whether the proposed scheme accords with the development plan policies. The development plan for this area comprises the saved policies of the BCNRLP, which was adopted in 2005 [3.1].
- 10.4 Policy NE.2 categorises all land outside the defined settlement boundaries of Crewe and its satellite villages as open countryside [5.32]. In the open countryside Policy RES.5 seeks to restrict new house building to infilling within an existing built-up frontage, or housing which is considered essential to meet the needs of an agricultural or forestry worker [5.41].
- 10.5 The underlying objective of Policy NE.2 is to safeguard the countryside both for agricultural production, and for its character and attractiveness [5.7]. The appeal site is clearly separated from the present built-up area by the railway line running just to the north of Gresty Lane [2.9]. It is an area in active agricultural use, but perhaps not very intensively [2.3]. There are views into and across the site and it can be seen as part of the rural countryside, albeit with a major dual carriageway (the A500) to the south [2.7], some built development adjacent to its north-eastern corner [2.4], and a semi-urbanised character immediately to the west along Rope Lane [2.6].

- 10.6 It is agreed by both parties to the appeal that the site lies outside the settlement boundaries of Crewe and that the proposed scheme would not fall within the allowances of Policy RES.5 [5.47].
- 10.7 Policy NE.4 establishes Green Gaps in the open countryside so as to ensure the continued separation between Crewe and neighbouring towns and villages. The extent of the Green Gaps is defined on the Proposals Map (Document CEC 21). It is accepted by both parties that the appeal site lies within the defined Shavington / Weston / Crewe Green Gap [5.7, 6.12].
- 10.8 There is, therefore, no disagreement that the proposed scheme does not comply with these policies of the development plan.
- 10.9 The site includes some agricultural land which falls within categories 2 and 3a; which is the best and most versatile agricultural land [5.51, 6.31]. Policy NE.12 seeks to resist the loss of such land unless the need for it is supported in the Local Plan, that the development could not be accommodated on land of lower quality, and that on balance the benefits in terms of sustainability outweigh the loss of good quality agricultural land. Here the land is not identified for development in the Local Plan. Again, on the face of it, there is direct conflict with the policies of the development plan on this point [5.51, 6.31].
- 10.10 The site is crossed by several well-established hedgerows, one of which marks a township or parish boundary, and others are field boundaries from the 19th century which pre-date the Inclosure Acts (ie before 1845) [5.54]. These are, therefore, 'important hedgerows' in terms of the Hedgerow Regulations¹⁶⁹. The Council's putative reasons for refusal refer to Policy NE.5 and that policy's wish to retain hedgerows, but that policy is primarily concerned with safeguarding nature conservation interest and habitats. At the inquiry it was agreed that the relevant BCNRLP policy is BE.16, which seeks to protect sites of known or presumed archaeological interest [6.33]. Where possible, the expectation is that (amongst other matters) the design of the development avoids unnecessary damage to the archaeological remains that are considered worthy of preservation *in situ*.
- 10.11 The hedges are not archaeological remains, nor are they designated heritage assets, and therefore, in simple terms, there is no conflict with either Policy NE.5 or Policy BE.16 [6.35]. However, and having regard to paragraph 135 of NPPF, this is not to disregard the significance of these as 'important hedgerows', and this is a consideration which will need to be weighed in the balance.
- 10.12 The interim conclusion to be reached at this point is that the proposed development does not accord with the policies of the development plan, and it is therefore necessary to consider whether there are material considerations which would justify making a decision otherwise. This leads into the first of the main considerations.

¹⁶⁹ SI 1997 No.1160 Countryside: The Hedgerow Regulations 1997

1. Whether the proposed scheme would fulfil the three roles for sustainable development identified at paragraph 7 of the National Planning Policy Framework; in particular, having regard to the development plan policies relating to intrusions into a Green Gap, loss of countryside, loss of best and most versatile agricultural land and loss of ancient hedgerows.

- 10.13 The primary point is the situation raised at paragraph 14 of National Planning Policy Framework (NPPF). This establishes the principle of favourable consideration being given to sustainable development. Paragraph 14 goes on to say that where the development plan is absent, silent or relevant policies are out of date, then planning permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted”.
- 10.14 In this case, the BCNRLP was written to guide development decisions up until 2011 [6.7]. The saving direction issued by the Secretary of State in 2005 recognised this and endorsed the role of BCNRLP as a development policy document, until such time as it was replaced, with the expectation that a replacement plan would be quickly prepared [6.4]. The Council is preparing the CELP as a replacement for BCNRLP but this is at only a fairly early stage in the adoption process, it having now been submitted for formal examination, with the hearing sessions for the Examination programmed to begin in September 2014 [5.3].
- 10.15 Because BCNRLP was formulated to accommodate the planned level of growth up until 2011, policies to manage the distribution of new development around Crewe must now be considered out of date, both in terms of the amount of growth to be planned for, and the limits BCNRLP places on the extent of the built-up areas.
- 10.16 Paragraph 49 of NPPF establishes a presumption in favour of sustainable development and “relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”. I turn to the matter of housing land supply in greater detail below but, if the Secretary of State accepts that there is not a 5-year supply of deliverable housing sites, this adds strength to the argument that at least some of the BCNRLP policies - insofar as they control the identification and release of land for housing development - cannot be regarded as up-to-date, and this would support the positive presumption put forward in NPPF paragraph 14.
- 10.17 Paragraph 215 of NPPF allows weight to be attached to relevant policies in existing plans according to their degree of consistency with the Framework. In this case, whereas the BCNRLP housing supply figures and, by association, policies to restrict the extent of built up area, are now out of date this does not mean that all policies of BCNRLP must be considered to be out of date. The relevance of other policies can be taken into account, according to their ‘fit’ with NPPF.

10.18 With these caveats in mind, the policy conflicts noted above are considered topic-by-topic below.

Development in the open countryside

10.19 The site is seen by the Council to be in the open countryside and hence Policy NE.2 should be applied. 'Open countryside' for the purposes of this policy is defined as the areas outside the defined limits of built-up development [5.41]. Because the housing supply figures and the associated limits of built-up are out of date, the corollary of this is that the area over which Policy NE.2 applies has to be seen to be flexible in order to accommodate the future planned growth for Crewe and the surrounding area [5.66].

10.20 In this context, as an area of land adjacent to the present limit of built development, the appeal site could be regarded as potentially one of the areas where the next period of planned growth for Crewe could take place. In the circumstances envisaged in NPPF paragraph 215, it would be rational to accept that the boundary of the area over which Policy NE.2 applies is no longer fixed. That is, if there is a justifiable need to release land for further development, NE.2 cannot be regarded as a bar to such releases. It would not be appropriate to dismiss this appeal solely on the basis that the proposed development would not meet the criteria for built development in the countryside set out in Policy NE.2 and RES.5.

10.21 Although the appeal site is seen as part of the countryside, it is relatively contained visually [5.46, 6.27]. It is not a prominent site in the landscape, and it is not seen in long-distance views. Development on this site would be seen from the adjacent roads – notably Rope Lane and Gresty Lane [6.27], but it would not be readily seen from the A500, and it would be separated from Crewe Road on its eastern side by an undeveloped field and hedges on the edge of the site and along the Crewe Road frontage [2.8]. It is proposed to retain as much as possible of the present hedgerows and individual trees on the site, and advance planting can be specified ahead of the commencement of development, to soften the visual impact of new buildings as they are introduced across the site.

10.22 This is not a designated or protected landscape [6.21]; it is not an Area of Outstanding Natural Beauty, nor has it been subject to any local landscape protection policies. It is within the LFW7 Barthomley Character Area, as identified in the Cheshire Landscape Character Assessment document [5.2, 6.22]. This character area extends widely around Crewe. As is the case with the consideration of the other likely effects of this scheme on the countryside, the landscape impact here would be little different – if at different at all – to that on other sites around Crewe [6.24]. The Council accept that other green field sites – also within the same landscape character area - will need to be taken for development to meet the levels of growth looked for in CELP [5.32].

10.23 The visual impact of this new development would be medium (the appellant's view) or high (the Council's view), [5.45, 5.46, 5.48]. The difference between the parties on the seriousness of the impact appears to be one of degree, rather than a fundamental disagreement. Both accept that the development would represent a loss of countryside and the new development would be seen. The main point is that the new development would be visible as an

urban extension, albeit one with carefully considered screen and landscape planting. It was accepted by the Council's witness that new development does not have to be invisible. It is also agreed between the parties that whilst irreversible, the effect would be localised [6.24].

- 10.24 That being so, the degree of change in this context - next to the present urban edge of Crewe and with a semi-urbanised street scene in Rope Lane [2.6] - the impact of the proposed development on the character and appearance of the countryside should not be an overriding objection if it is seen to be necessary to meet housing needs. This point is explored further below, under an examination of the 5-year housing land supply.

Green Gap

- 10.25 The proposed development would intrude into the present separation between Crewe and Shavington / Weston, which Policy NE.4 seeks to maintain [5.7, 6.12]. The Green Gap policy is more than a policy which seeks to restrict housing supply [5.32], and its purpose is not simply to safeguard the countryside – that is the purpose of Policy NE.2. This was accepted by the Secretary of State to be the role of similar Green Wedge policy as discussed in the Coalville, North West Leicestershire appeal¹⁷⁰ [5.35, 5.66]. The objective of NE.4 is to prevent the merger of Crewe with (amongst other places) Shavington; to retain the separate identities of each of the settlements. In this case the Council, strongly supported by local residents [7.3, 7.4], wishes to ensure that Shavington is not merged into the urban area of Crewe and that the character of the village should be protected.
- 10.26 At the inquiry it was confirmed that there is no published report or study which analyses the character of Shavington, nor is there any published supplementary planning guidance which identifies key features of the village or its setting which have to be regarded as essential features to be safeguarded and protected.
- 10.27 Plan 3 in document IR 2 shows the separation distances [6.27], and Plan 1 in Document IR 1 shows the extent of the Green Gap which would exist, taking account of the appeal scheme and other development permitted nearby. The degree of separation at present varies between 860m and 250m [6.27]. At the western end, there is built development on the western side of Rope Lane almost right up to the bridge over the A500 [2.11].
- 10.28 North of the bridge over the A500, along Rope Lane are the school, the leisure centre and the Medical Centre which can be seen as semi-urbanising elements tenuously linking Shavington and the southern edge of Crewe [2.6], although the railway line and the bridge over the railway represent a distinct physical divide, and there is no obvious visual connection between the street scene of Rope Lane and the more intensive urban development north of the railway [2.9].
- 10.29 The proposed scheme would bring built development within 240m of the edge of Shavington on the eastern side of Rope Lane. This distance takes into

¹⁷⁰ Appeal Ref: APP/G2435/A/11/2158154

account the planning permission granted on appeal on the eastern side of Rope Lane, adjacent to the present housing. The appeal scheme would be perceived as a southern advance of the Crewe built up area towards Shavington, and would almost halve the present separation in terms of linear distance.

- 10.30 Further east, the degree of separation is presently between about 809m and 890m, and this would be reduced to between 320m and 520m. Having said that, the A500 is an undeveloped (apart from the road itself) corridor between the two settlements, with the width of a field between the A500 and the southern edge of the proposed scheme, and a swathe of agricultural land approximately 150m – 300m wide between the northern edge of Shavington and the A500. There would also be established hedges along the edges of the cutting which the A500 runs through, as well as hedges and the small wood along the appeal site boundary, and hedges around the fields to the south of the A500 [2.3, 2.7]. This physical divide, together with the hedges, would maintain a level of visual separation between the appeal scheme and the present edge of Shavington.
- 10.31 In the north-east corner of the site, the proposed new development would come to within 280m of the nearest buildings in Shavington on Crewe Road. This should be seen in context of the proximity of Shavington to the Basford West development area, on the northern side of A500 and to the east of Crewe Road. Here the Council has recently approved development (February 2014)¹⁷¹ which would come to within about 270m of the northern edge of Shavington [5.101].
- 10.32 Taking these points together, the proposed scheme would not result in the built up areas of Crewe and Shavington being merged; there would be a degree of separation both in terms of measured distance, and visual separation because of the fields and hedges [6.28, 6.29]. The A500 corridor, although in cutting for most of its alignment in this locality, would also mark a divide between the two settlements. However, notwithstanding the measured separation distances, the tree and hedge screening and the linear divide of the A500, it is clear that the local residents consider that the proposed development would unacceptably erode the sense of separation between Crewe and Shavington [7.4]. It is this perception of separation which underlies the purpose of Policy NE.4. This point needs to be weighed in the overall planning balance.

Best and most versatile agricultural land

- 10.33 As noted above, parts of the site are within the higher agricultural land classifications of 2 and 3a. However, this is not of great agricultural significance. The higher grades are found across parts of a number of parcels or fields, and no one field is made up of land only in one or other of the higher grades. Farming practice is to select a crop which suits the lowest grade in any one field; there are practical difficulties of growing a higher performance crop on one part of a field, and another crop on the remainder.

¹⁷¹ Site CS2 in the Cheshire East Local Plan Strategy (CD 6.1) pp191-194.

In which case, for practical purposes, the appeal site cannot be regarded as overall representing greater than 3b grade land [6.37].

- 10.34 The appellant did not present evidence to demonstrate that all other options have been exhausted, to show that it is not possible to accommodate additional urban development at Crewe on land of a lower grade [5.51]. Having said that, the majority of land around Crewe is within the best and most versatile categories and it would be difficult not to use such land if the town is to develop and expand to the degree envisaged in the CELP. It would be unreasonable to argue that the appeal should be dismissed for this reason.

Historic hedgerows

- 10.35 The important hedgerows are not designated heritage assets [6.35], but their significance should not be disregarded. The hedges do have some historic and cultural significance in that one hedge crossing the site - approximately east-west and then turning southeast - marks an ancient parish boundary, and others delineate a field pattern which characterised the countryside prior to the Inclosure Acts [5.54].
- 10.36 Nevertheless, the hedges are not unique; they are fairly typical of the countryside hereabouts and it is highly likely that any land taken for urban expansion around Crewe would have a similar pattern of hedgerows with a similar cultural and historical significance.
- 10.37 It is proposed that as much of the hedgerows as possible should be retained within the development. The rationale for this is partly to retain and respect contribution the hedges make to the landscape, partly to give some structure to the scheme and to delineate phases of the development, and partly to provide screening and to visually break up the development. That is, the hedges would not be entirely lost and it would still be possible to follow their routes and to recognise and interpret their historical or cultural relevance, albeit in a different (urbanised) context [6.35].
- 10.38 Gaps will need to be created in the hedges to permit the construction of the main spine road through the scheme, and to form access points into the residential areas. Document HG 22 is a plan showing the present hedges superimposed on an outline of the illustrative Masterplan layout. This estimates that some 520m of hedge would be lost from an overall total of 4,022.93m – or 12.93% removed [5.55]. However, that calculation has seemingly not taken into account gaps which currently exist in the hedges at various points to allow access between fields [2.3]. But even allowing for that, and subject to the actual details and design to be considered as reserved matters, the scheme would probably result in the loss of some 10% of the existing hedges.
- 10.39 In view of the fact that development anywhere else around Crewe is likely to take land with similar hedges of similar age and significance, it would be disproportionate to regard this alone as justification for dismissing the appeal.

Other sustainability considerations

- 10.40 Should the scheme be thought to be acceptable in terms of the four topics discussed above, it would be relevant - whether following the Davis judgment

or not - to come to an overall view on whether the scheme could be regarded as sustainable development [5.14].

- 10.41 In terms of accessibility, the site is reasonably close to the centre of Crewe, which has a good range of shops and services. The residents on the site would have access to employment opportunities within Crewe on established and proposed industrial estates and business parks. Crewe station is within 1½ - 2 miles of most of the appeal site, and there are good rail services to other main centres in the Midlands and the North-West [2.1]. The scheme includes an obligation to support a local bus service and there is an obligation to produce Travel Plans for both the residential and commercial developments on the site which, amongst other matters, would encourage walking and cycling [9.22]. That is, the scheme offers realistic opportunities for access to a wide range of goods and services locally and without the need to rely upon use of private cars. This could be regarded as fulfilling an economic and an environmental role.
- 10.42 Within the scheme there are proposed to be a local centre for shops and a community hall. The Illustrative Masterplan also shows a public house and a primary school, plus a number of play areas and small greens or parks and community allotments [4.4, 5.46]. On the opposite side of Rope Lane – that is, almost immediately adjacent to the appeal site – are a secondary school, a modern sports or leisure centre and the Medical Centre [2.6]. The scheme thus offers the opportunity for the residents to form a community which could be self-sufficient for at least local social, recreational educational and cultural purposes. This could be seen as meeting the social role of sustainable development. The scheme would include some employment in the local shops and services and in the retirement / care village, and these shops and services would fulfil a social and an economic role.
- 10.43 Drawing together these elements of the first main consideration, on the basis that, for the most part, the proposed development is unlikely to be any more harmful to the countryside than any other scheme around the periphery of Crewe, and the CELP is anticipating growth which would inevitably require such areas for development, the appeal scheme cannot be dismissed for these reasons alone; the environmental harm the appeal scheme would cause to the countryside could be regarded as 'neutral' in this context. The appeal scheme is put forward as one where the principles of sustainable development underlie the design ethos and the scheme could be regarded as fulfilling the social, economic and environmental roles for sustainable development, as identified at paragraph 7 of the National Planning Policy Framework.
- 10.44 The one reservation is the extent to which the proposed scheme intrudes into the present Green Gap, which is perhaps not a concern about sustainability, but more a matter of strategic policy. This point is addressed below in an assessment of whether the scheme would be regarded as premature, having regard to the evolution of CELP.

2. Whether there is a 5 year housing land supply in the local authority area and how this may impinge upon the applicability of current development plan policies.

Full, objectively assessed need

- 10.45 The first stage in considering whether the Council has a 5-year supply of deliverable housing sites is to come to a view on what is the full objective assessment of need (FOAN).
- 10.46 In the absence of a figure for the FOAN which has been tested through a local plan Examination, it is necessary at a s.78 appeal to consider what the FOAN might be [5.86, 6.67]. Having said that, a s.78 inquiry is not able to give a thorough examination of competing claims as to what the FOAN actually is. To arrive at a definitive conclusion on the FOAN it is necessary to explore the validity or relevance of all of the various statistical inputs, assumptions and methodologies. From the evidence at this inquiry, it is disputed as to whether this should also take into account a plan's economic strategy, employment forecasts and affordable housing needs - ie the 'policy on' influences.
- 10.47 Whatever factors have to be seen to be necessary to determine the FOAN, the full evidence base to support such competing claims, and the range of expertise needed to explore and test the claims was not present at the inquiry for this appeal. That discussion might also need to consider whether the CELP's interpretation of what FOAN encompasses accords with the Hunston [5.86 etc., 6.62 etc.] and Gallagher judgments [5.88 etc., 6.61 etc.]. Indeed, the Gallagher judgment indicates that arriving at the local plan requirement is a three-stage process starting with a forecast of need, progressing through to a calculation of the FOAN and then setting the requirement. The appropriate forum for that exercise is the local plan Examination, and it would be neither helpful nor adequately justified for a decision in this appeal to pre-empt the outcome of that Examination by coming to what might be regarded as the definitive figure for the FOAN (or perhaps the requirement) on the basis of the limited evidence and fairly narrow discussion heard at this inquiry.
- 10.48 The Gallagher judgment sets out three concepts or stages in determining the amount of housing which should be applied to establish a local plan's housing strategy. According to Gallagher, the FOAN is not just a projection of household formation, it also has to take into account the likelihood of matters such as a major upturn in the economy. The FOAN is then the basis for further adjustments to take account of policies which could either constrain that figure, or reflect ambitions for growth over and above simple statistical projections, arriving at a requirement figure. Paragraph 47 of NPPF expects a local plan to meet only one of the three concepts - the FOAN. That is, whether the eventual local plan requirement figure may be greater (or lesser) than the FOAN is seemingly not relevant when applying the test of the first paragraph of paragraph 47. Having said that, it should be noted that the Gallagher judgment and its three-step concept post-dates the publication of the NPPF (and the submission of CELP for Examination) and has perhaps introduced an element of uncertainty as to which figure - ie the FOAN or the

subsequent requirement figure - should be used to address the expectations of paragraph 47.

- 10.49 Looking at what the FOAN figure might be, what the Council says itself is the FOAN in the recently submitted draft CELP should be pertinent. The Council has put that figure forward after proper consideration of the relevant factors and consultation with the various stakeholders, and the Council would be defending that figure at the Examination as one which is correct, justified and reliable. In these circumstances, it is hard to understand why the Council put forward evidence at this inquiry to disassociate itself from the figure promoted as the FOAN in its own draft local plan and, indeed, to actively argue against that figure being the one which has to be taken into account in this appeal.
- 10.50 Whilst the Council at this inquiry argued that the FOAN should be lower than the CELP figure, it is clear that others believe it should be higher [5.96]. This is shown in the questions which the Inspector conducting the local plan Examination has asked of the stakeholders in order to explore the differences of view¹⁷². Nevertheless, as noted above, it is necessary for the purposes of this appeal to come to a view on what should be regarded as the FOAN on the basis of the evidence presented at this inquiry.

FOAN for the purposes of this appeal

- 10.51 Reference was made to a number of High Court decisions and the Court of Appeal Decision in Hunston which – amongst other matters - looked at how to determine the FOAN [5.86].
- 10.52 The point made in Hunston is that, whereas the housing figures in the RS may be the ones which have been most recently tested at an examination, these are not necessarily the reliable basis for decision making – time has moved on since the RS examination and, indeed, the RS has been revoked [5.86].
- 10.53 For the purposes of this inquiry, the Council argued that the DCLG household projections for Cheshire East produce a figure of 1,050 dpa to 2021, and this should be taken as the FOAN [5.95]. However, that figure has to be open to question, not least because the CELP establishes a new strategic vision and puts forward housing and economic growth aims to meet that vision, which depends upon a greater housing provision than a simple statistical household projection.
- 10.54 Paragraph 47 of NPPF states that the Council should use the evidence base of the local plan to ensure that it meets the FOAN for market and affordable housing. The CELP still has to be scrutinised at Examination and therefore the figures put forward in the CELP cannot be accepted as conclusive at this stage; objections have been lodged that the figures are too great and – perhaps more significantly – the figures are not high enough¹⁷³.

¹⁷² Document SB4, Appendix 5

¹⁷³ The Inspector conducting the Examination has queried the justification for a figure of 1,350 per annum, wondering whether this would be sufficient to meet the employment growth strategy of the

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- 10.55 However, Strategic Priority 2 of CELP¹⁷⁴ is a commitment to providing the FOAN for the Borough. The submitted CELP is based on a projected minimum requirement of 27,000 houses over a 20 year period 2010- 2030¹⁷⁵, which is an average of 1,350 per year. Paragraph 8.8 of CELP plainly states that the 27,000 figure is the FOAN [6.65]. It is therefore curious – if not inconsistent – that having submitted the CELP for examination in May 2014 [5.129], the Council appeared at this inquiry (two months later) arguing that it is not correct to regard an annual figure of 1,350 as the FOAN for the purposes of this appeal.
- 10.56 Much discussion took place over whether the Council was putting forward a realistic alternative figure at this appeal. The Court of Appeal decision in Hunston determined that the housing need was an assessment to be made irrespective of the effect of other policies [5.86]. In that case (in St Albans) it was judged that when assessing the housing need figure the constraints Green Belt policy would impose on the ability to meet that calculated need should be disregarded. That is, housing need is the ‘policy off’ figure, and housing requirement would be the ‘policy on’ (ie constrained) figure.
- 10.57 The current advice at paragraph 2a-004 of Planning Practice Guidance (PPG) is that an assessment of need should not take constraints into account. This would correspond with the High Court judgment in Gallagher. That is, housing need is a ‘policy off’ figure [5.89, 5.90]. But Gallagher also says that a need figure which has been arrived at simply by applying household projections is not the FOAN.
- 10.58 The Council argued that the policy off figure for Cheshire East is 1,150 dwellings per year. This is the RS requirement which is the only figure which has been through a public examination [5.84]. It also corresponds closely with a projection of households up to 2030, based on the 2013 Office for National Statistics (ONS) household projections [5.93]. PPG notes that household projections is the appropriate starting point for calculating housing need, but the PPG goes on to note that the household projection-based estimate may require adjustment to take into account factors which are not reflected in past trends. PPG paragraph 2a-016 points out that ONS 2011 based projections only cover a period up to 2021; projections beyond 2021 would need to consider if different trends would be likely after that year. This would correspond with recent academic views published by the Town and Country Planning Association (Document HG 9) [6.70].
- 10.59 At this point it is appropriate to look at whether performance against the BCNRLP is a reliable indicator of what is required under current planning expectations (as given in in NPPF). The housing figures in BCNRLP were derived from the RS. The RS was based on a strategy which sought to focus or concentrate growth in the main urban areas of Merseyside and Greater Manchester [5.92], which inevitably resulted in a constrained figure for Crewe

plan and if it would produce the required number of affordable houses (see Document SB 4, Appendix 5, point vi).

¹⁷⁴ CD 6.1 page 51

¹⁷⁵ CD 6.1, Policy PG 1 and paragraph 9.4

and Nantwich which did not reflect the actual potential for growth and the associated need locally. The DCLG 2003 based projections for the RS period (after the draft RS had been submitted for examination) produced a figure of 1,300 private household per annum for Crewe and Nantwich Borough¹⁷⁶. This supports the view that the 1,150 RS figure has to be seen as a constrained figure. That is, because past trends have been used as the basis for housing projections, the projections now need to be adjusted to take account of previous suppressed demand.

- 10.60 At the inquiry the Council maintained that, because of economic conditions locally, it is appropriate to use the same assumptions used for the household formation projections up to 2021 into the period up to 2030. That may be so, but this is a point which is more appropriately argued at the Examination into the CELP, where the full range of views – and the data to support those views – would be before the Inspector. As commented above, it is not appropriate at a s.78 inquiry, where only two parties are represented, to come to firm conclusions on the assumptions made, methodology used and eventual reliability of the various projections.
- 10.61 Whereas, according to Hunston, the ‘policy on’ figure has to be regarded as the housing need, in practice this would seem to be a figure which has been arrived at by applying established or higher-level policies and which has the effect of suppressing or constraining the requirement [6.62]. Following the advice in PPG, formulating a housing requirement for a local plan needs to take account of economic modelling, market factors etc., [6.63], and has to take account of previous ‘policy on’ constraints and how those have influenced past performance, before applying these factors and influences to arrive at a figure which reflects the needs of the local authority area.
- 10.62 The ‘policy on’ adjustment would only be applied at that stage, and – as was the case in Hunston – seemingly only where this is likely to lead to the need to adjust the need figure downwards to arrive at a requirement which would be achievable given the constraints. It would be inconsistent with paragraph 150 of NPPF - which says that local plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities - to accept that matters such as migration and demographic change, economic modelling, market factors, and growth aspirations are part of the ‘policy on’ stage of identifying the housing requirement. Such factors are part of the process of identifying the “vision and aspiration”. Gallagher says that ‘policy on’ could lead to a figure higher than the FOAN. In this case there are no overriding ‘policy on’ factors (such as Green Belt, National Park or Area of Outstanding Natural Beauty designations) [6.51] which would require the housing need assessment to be adjusted downwards on the basis that it was not possible to accommodate the aspirations which have been factored into the preparation of the local plan. The CELP does envisage some adjustments to the Green Belt boundaries, but this is not perceived to be an overriding constraint affecting the ambitions of the Council.

¹⁷⁶ Document SB4, Para 3.11

- 10.63 Taking account of the above, and in particular noting what the CELP itself says is the FOAN, until such time as the CELP figures have been tested at Examination and carried forward in to an adopted local plan, it would be reasonable to accept that the FOAN for East Cheshire is the figure given in the CELP; that is, an average of 1,350 dwellings per annum. Accordingly, this should be taken as the basis for assessing the 5-year housing land supply. To accept the lower figure of 1,150 would imply acceptance of, or possibly support for, a housing strategy outcome that is below one which is adjusted for historic economic downturns or suppressed needs, and which would not reflect the aspirations of the local plan prepared by the Council.
- 10.64 If the figures in the CELP are to be taken as the basis of assessing whether the Council can demonstrate a 5-year supply, Policy PG 1 and paragraph 8.19 of the CELP sets out a phased 'ramping up' of the housing supply provision, with 1,200 dwelling per year given as the figure for 2010-2015 [5.94]. With 27,000 as the overall 20-year aspiration, this would require a rate of supply increasing progressively from 1,200, to 1,300, then 1,400, and finally 1,500 per annum over four successive 5-year periods. However, this phased incremental strategy has not been tested at Examination and, it was noted at the inquiry, this approach is the subject of objections [5.96].

5% or 20% buffer

- 10.65 Paragraph 47 of NPPF requires a buffer of sites to be available, above the number of sites needed to satisfy the FOAN. This should be 5% where the availability of sites is sufficient to meet the FOAN. Where there has been a persistent under delivery of housing the buffer should be increased to 20%.
- 10.66 The housing supply (or delivery as it is termed in NPPF) is the number of completions over a given period. The approach in NPPF suggests that, even if sufficient sites had been made available, if these were not built out at a rate which corresponds with the FOAN, then the response to this is to make a greater number of sites available, giving a greater opportunity for sites to be completed and for overall performance not to be distorted or depressed by sites being left undeveloped, or built-out at a slower rate.
- 10.67 In this context, the 20% is not to be interpreted as a penalty; as explained in NPPF, it would only draw forward allocations which would otherwise be programmed later into the plan period [6.72]. That is, it only seeks to boost the rate of supply within the planned FOAN, not to increase the total number overall.
- 10.68 The Council argued that housing construction has been suppressed by economic recession and market conditions, and recent past performance does not necessarily indicate what can – or should – be achieved. It was argued that performance over a longer period should be taken as the indicator of what should be a realistic assessment of what can be achieved, in that this would even out troughs and peaks in the housing supply [5.77]. This would be consistent with PPG advice at paragraph 3-035.
- 10.69 It is true that the recent economic recession does not represent a typical period in the economy where finance to support house construction and purchases has been constrained. It may therefore, be unfair to treat the

period from 2009 – 2014 as representative of a 'normal' rate of completions in Cheshire East. A longer view would give a fairer indication.

- 10.70 Figures produced by the Council at the inquiry (Document CEC16) show that 10,400 houses were completed over the period 2005-2014, an annual average of 974. Looking at this performance on a year-by-year basis, the period 2003-2010 has to set against a delivery target of 1,150 – the figure set by the RS in BCNRLP - and thereafter against the delivery target of 1,350 in CELP. Taking the Council's table CEC16 and applying the 1,350 figure against the relevant years gives the following results:

Table 1 – Performance against local plan housing numbers (CELP average)

Year	Completions	BCNRLP / CELP	Under/over provision	Cumulative	% of plan figure
2003/04	1,264	1,150	114	114	110%
2004/05	1,287	1,150	137	251	112%
2005/06	1,498	1,150	348	599	130%
2006/07	1,295	1,150	145	744	113%
2007/08	1,365	1,150	215	959	118%
2008/09	741	1,150	-409	550	64%
2009/10	634	1,150	-516	34	55%
2010/11	466	1,350	-884	-850	34%
2011/12	535	1,350	-815	-1,665	39%
2012/13	652	1,350	-698	-2,363	48%
2013/14	663	1,350	-687	-3,050	49%
Total to 2013/14	10,400	13,450	-3,050	-3,050	77%
Average	974	1,223			

- 10.70 From Table 1 it can be seen that the completions exceeded the development plan requirement over the period 2003-2008. Thereafter, performance dipped dramatically such that against the 1,350 figure between only 34% and 49% was completed in any one year. The drop in performance against the development plan expectation since 2008 can be explained by the impact of the recession, but even taking an average over the 11 year period recorded in the table above, only 77% of the development requirement has been delivered.
- 10.71 There has been a period of six consecutive years (2008-2014) where there has been a shortfall. Whereas these years correspond with the period of the economic recession, this is a continuous six-year period where delivery has been significantly below expectations (from 64% down to as low as 34%). This shows that the record of under-delivery has been consistent and therefore it would be appropriate to apply a buffer of 20%.

Backlog

- 10.72 To this calculated supply figure has to be added the backlog of dwellings not completed. Paragraph 3-035 of PPG acknowledges that a variety of factors may be relevant in assessing which buffer should be applied. Indeed, the guidance acknowledges that there is no universally applicable test or definition of under delivery, and hence there is scope for discretion over how this is to be assessed, depending on the circumstances and local history of delivery. With no firm guidance on methodology on how to conclude on whether the 5% or 20% buffer should be applied, it may be helpful to assess the situation by using the data in a variety of formulations.
- 10.73 The Council contend that the net backlog is 1,763 dwellings, based on performance since April 2003 – March 2013 and assessed against the RS requirement of 1,150 dwelling per year. Using the Council's figures set out in Document CEC16, this figure rises to 2,250 by March 2014.
- 10.74 The appellant argues that the backlog is 2,913 dwellings, derived from shortfall against the CELP average figure of 1,350 dwelling per annum over the period the emerging local plan is intended to apply (April 2010 – December 2013 – 3 years, 9 months). The information on CEC16 allows that figure to be up-dated for four full years, which would come to 3,084.
- 10.75 Using Table 1 set out above, the backlog over the period used by the Council, but using the RS/BCNRLP figure of 1,150 until 2010, and the CELP figure of 1,350 thereafter, the backlog is 3,050 – a very similar figure to that argued by the appellant.
- 10.76 Document HG 13 (produced by the appellant) notes that the Council had claimed 487 completions as an allowance against C2 / student accommodation. The appellant does not accept this in their summary of housing land supply because to include it would not be consistent with the advice in PPG¹⁷⁷ that an allowance can only be made for this type of accommodation if it is specifically factored into the local plan. At the inquiry the Council accepted that the local plan does not make specific allowance for C2 / student accommodation and it was not factored in to the July 2014 update of the Position Statement (Document CEC 16).
- 10.78 The approach favoured by PPG¹⁷⁸ is that the shortfall should be made up in the first five years, rather than spread over the whole plan period. That is, the five year supply requirement is $1,350 \times 5 = 6,750 + 3,050 = 9,800 + 20\%$ (1,960), gives a total 5 year requirement of 11,760. This represents 2,352 dwellings per year over the next five years.
- 10.79 Table 2 below sets out the same analysis, but applied to the CELP Policy PG 1 incremental approach. With 1,150 per year for 2009-2010 (the RS/BCNRLP period) and 1,200 per year for 2010-2014, the situation is not so severe, with completions of 10,400 against a total requirement of 12,850, which gives a cumulative backlog of 2,450 (10,400 would represent 81% of the reduced

¹⁷⁷ PPG paragraph 3-037

¹⁷⁸ PPG paragraph 3-035

requirement). This would still trigger the need for a 20% buffer as 2,450 would be a persistent (i.e. six consecutive years 2008-2014) shortfall during the 11 year period of 19%. The 5 year requirement would be $1,150 + (4 \times 1,200) = 5,950 + 2,450 = 8,400 + 1,680$ (20%): a total 5 year requirement of 10,080. This would represent 2,016 dwellings per year over the next five years. However, because this incremental approach is subject to objections at the local plan Examination this alternative analysis has to be regarded with considerable reserve.

Table 2 – Performance against local plan housing numbers (CELP incremental strategy)

Year	Completions	BCNRLP / CELP	Under/over provision	Cumulative	% of plan figure
2003/04	1,264	1,150	114	114	110%
2004/05	1,287	1,150	137	251	112%
2005/06	1,498	1,150	348	599	130%
2006/07	1,295	1,150	145	744	113%
2007/08	1,365	1,150	215	959	118%
2008/09	741	1,150	-409	550	64%
2009/10	634	1,150	-516	34	55%
2010/11	466	1,200	-734	-700	39%
2011/12	535	1,200	-665	-1,365	45%
2012/13	652	1,200	-548	-1,913	54%
2013/14	663	1,200	-537	-2,250	55%
Total to 2013/14	10,400	12,850	-2,450	-2,450	81%
Average	974	1,168			

Housing supply

- 10.80 Paragraph 158 of NPPF says that housing need in a local authority area should be prepared in the context of a Strategic Housing Market Assessment (SHMA), and this should be used in conjunction with the Strategic Housing Land Availability Assessment (SHLAA) to establish realistic assumptions about the deliverability of potential sites to meet the identified need.
- 10.81 The Council's latest assessment of the supply position is shown in document CEC 15. This gives a figure of 9,652 sites either with planning permission, under construction, allocated sites likely to come forward within the next five years (ie the SHLAA sites) and an allowance for windfalls. However, this assessment has not been arrived at in discussion and agreement with the industry through the Housing Market Partnership [6.79].
- 10.82 Evidence given by the appellant was that there has been no agreement on matters such as the realistic build-rate on sites with permission or likely to come forward, either on account of the number of builders who might be

working on a larger site, or the rate of construction on other sites. The 2013 SHLAA applied a build rate of 50 dwellings per annum on sites of over 200 dwellings, or 30 dwellings per annum where only one builder is involved. For 2014 the Council has unilaterally adopted different assumptions about lead-in times and build rates.

- 10.83 The Council's evidence (Document GCS 1, paragraph 8.1) gives the Council's view of build rates – which is an average of 13 completions per year for sites of 10-49 dwellings, 26 per year for sites of 50-100 dwellings, and 30 per year for sites of over 100. However, the Council's 2014 Position Statement has been prepared using rates which are higher than this. The support for this is seen in the views of developers at recent planning inquiries, where start dates and build rates have been much more optimistic. Looking at other large sites across the north-west, higher build rates have been achieved in places such as Warrington and Chorley, where (for instance) there may be a larger overall market demand.
- 10.84 The stance taken at this inquiry differs from the Council's December 2013 Position Statement on both build rates and lead-in times. The latest rates agreed between the industry and the Council are given in the 2013 SHLAA. Up-dating the 2013 SHLAA, and using the same assumptions, the appellant comes to a supply figure of 7,903 sites. The appellant characterises this as "more realistic yet still ambitious".¹⁷⁹ Against the annual requirement of 2,352, 7,903 represents 3.36 years land supply. If the Council's assessment of supply of 9,652 is used, this would represent 4.10 years land supply.
- 10.85 If the CELP incremental approach is taken as the basis for assessing the situation then there is an annual requirement of 2,016 (10,080 over 5 years). In which case, 7,903 represents 3.92 years and 9,652 represents 4.78 years.
- 10.86 The Council's latest view on the number of available sites has to be treated with some caution. Firstly, developers appearing at inquiries are likely to be more optimistic about start dates and rates of completions if they are seeking permission in areas where it is thought that the completions rate has fallen below the local plan requirement or the SHMA assessment. They may be keen to promote the view that their site would be available to make an early and significant contribution to the shortfall. Secondly, the market condition in other locations (Warrington and Chorley are referred to in the Council's evidence) may not be comparable to Cheshire East. The SHLAA process is intended to produce an agreed estimate of availability, and the value of a unilateral interpretation has to be limited or questionable. Having said that, it is not a predictive process, but does no more than produce a 'best guess' based on experience, local knowledge and past performance.
- 10.87 Even allowing for the fact that performance on particular sites can vary from the SHLAA base assumptions in any one year, and evidence showing that specific sites in Cheshire East have recently had short lead-in times for the commencement of development, the Council's unilateral stance is contrary to the advice in PPG which states that the preferred approach to assessing housing land availability should through the mechanism of the SHLAA. This

¹⁷⁹ (Document SB 4, paragraph 5.17).

being so, and using the figures based on the SHLAA put forward by the appellant, at the time of this inquiry there was a shortfall of 3,857 available sites (11,760 – 7,903). Even with the alternative incremental approach the shortfall would be 2,177 (10,080 – 7,903).

- 10.88 There are two scenarios which would be seen as giving a 5-year supply within Council's availability figure of 9,652. The first is based upon the up-dated Position Statement which the Council presented at the inquiry (Document CEC 16). That relies upon the RS/BCNRLP figure of 1,150 remaining as the requirement throughout and applying a 5% buffer. That calculates as $1,150 \times 5 = 5,750 + 2,450 = 8,200 + 410 (5\%) = 8,610$, or 1,722 per annum. Against that, 9,652 represents 5.6 years supply.
- 10.89 The second scenario is if the incremental strategy of CELP is used and a 5% buffer is applied. That scenario would give a figure of $5,950 + 2,450 = 8,400 + 420 (5\%) = 8,820$, or 1,764 per annum. Against that, 9,652 represents 5.47 years supply.
- 10.90 The appellant's supply figure of 7,903 - which has been derived by a methodology in line with the PPG approach - would leave a shortfall of 707 (or 4.58 years supply) against the first scenario and 917 (or 4.48 years supply) under the second.
- 10.91 However, for the reasons set out above, the RS/BCNRLP figures are not relevant after 2011 and the CELP incremental approach should be regarded with a degree of caution. Also, the Council has been selective in accepting the PPG guidance in how it justifies its view of availability; whereas it accepts that it should not now include an allowance for C2 housing, it does not accept that it should follow the SHLAA agreed approach to assessing availability. Furthermore, it would be quite a flexible interpretation of the NPPF and PPG advice to regard six consecutive years of shortfall, and an overall performance over an 11 year period of between 77% and 81% against requirement, as anything but persistent under-supply. In my view, the Council's position on housing supply has been inconsistent in how it conforms with NPPF and PPG guidance, and its understanding of whether there has been a persistent under-supply is not well founded.
- 10.92 That is, on the basis that whatever figure given in the CELP is used (1,350 or the incremental 1,200), under either approach and adopting a 20% buffer, the Council cannot demonstrate a 5-year supply of available sites in accordance with the expectations and guidance of NPPF and PPG. This would trigger the presumption in favour of sustainable development given at paragraph 49 of NPPF. Two scenarios – where a 5% buffer is applied – could meet the Council's estimate of presently available sites; but there are considerable doubts about whether 5% is the appropriate buffer and whether the Council's view of the number of currently available building sites is justifiable. In my view, neither of these contentions is robust.
- 10.93 The paragraph 49 presumption reinforces the situation discussed above that the relevant adopted policies for the supply of housing should not be considered up to date. However, whether it is appropriate to allow the appeal and grant planning permission also requires consideration of whether the

scheme represents sustainable development. It also needs to be considered against the caveat in paragraph 14 of NPPF noted at paragraph 10.13 above.

3. The effect of the proposed development on the free flow of traffic on the surrounding road network.

- 10.94 The appeal site lies to the south of Crewe. Access to the town would be, at least in part, via Crewe Road and Gresty Road (B5071), to where it joins the Nantwich Road (A534) in the centre of the town, close to the railway station. Traffic would also disperse onto the wider road network along the A500 and A51 towards Nantwich, and to the east towards the M6 along the A534 and A5020. At the inquiry it was accepted that, with contributions offered through s.106 planning obligations, improvements could be made to junctions on the A51 / A500 (Cheerbrook Roundabout) and the A534 / 5020 (Crewe Green Roundabout) to accommodate the traffic generated by the appeal scheme. The submitted undertakings include such contributions [9.19]. However, what remained at dispute was whether the B5071 corridor (Gresty Road/South Street) could accommodate the additional traffic without creating unacceptable delays for road users.
- 10.95 No development plan policy was cited in the putative reason for refusal (No.7), but paragraph 32 of NPPF is referred to. The relevant part of paragraph 32 requires that where new development is being proposed consideration should be given as to whether improvements could be made to the transport network to cost effectively limit significant impacts of development. It goes on to say that only where the residual cumulative impacts are severe should development be prevented.
- 10.96 Gresty Road is a typical urban road, with one lane of traffic in each direction for most of its length. As it approaches Nantwich Road, Gresty Road forks off to the right at a point opposite the junction with Catherine Street (referred to as Junction 4 at the inquiry), with the main flow of B5071 northbound traffic (as indicated by road markings) continuing along South Street to its junction with Nantwich Road / Mill Street – (referred to as Junction 5 at the inquiry) [5.106].
- 10.97 There is a degree of disagreement over how the relevant traffic model has been calibrated to portray traffic in 2030. This has given rise to disagreement over how much additional traffic would pass along Gresty Road. However, it is accepted by the appellant that the proposed scheme would increase the traffic flow along B5071 and through the two junctions. The disagreement is fundamentally as to whether the residual additional delay – after taking into account all other alterations to the traffic network around Crewe – would be so severe as to be unacceptable.
- 10.98 These junctions are heavily used at present – as confirmed by local residents either at the inquiry or in the written representations [7.5]. Along the Nantwich Road traffic is also congested in the vicinity of Junction 5 – slowing the free-flow of traffic out of South Street / Gresty Road. Nantwich Road traffic is notably slow because of the width of the A534 over the railway at the station (known locally as Station Top) and the amount of traffic passing through the Nantwich Road / Macon Way / Weston Road roundabout (known as the Crewe Arms Roundabout) immediately to the east of Station Top

- [2.12]. It can take 8½ minutes to travel the ½ mile northwards from the Gresty Bridge (where the B5071 passes beneath the railway line) to the Nantwich Road in the morning peak [5.106]. Understandably, local residents do not want their journey times unreasonably extended as a consequence of the appeal scheme.
- 10.99 Considerable changes are due to be introduced to the local highway network in advance of committed or planned new development. Construction has just started on the Basford West Spine Road, and work is due to start in the foreseeable future on the Crewe Green Link Road South, which will link the A500 east of the railway line to the present Crewe Green Link Road (A5020) at Crewe Green Roundabout [5.108]. The design of these new roads has not taken into account the possibility development on the current appeal site, but they will offer some alternative routes for journeys into Crewe from the south; thereby potentially relieving some of the traffic from Gresty Road.
- 10.100 The Council calculate that, allowing for the completion of Basford West Link Road and Crewe Green South Link Road the appeal scheme would result in delays in the order of 128 seconds per vehicle at Junction 5 – which is an increase of 50 seconds over the present 78 second delay noted in the Transport Assessment which supported the planning application. This, it argues, would not be acceptable [5.116].
- 10.101 However, this position would be inconsistent with the Cheshire East Transport Models Review Highway Impacts and Mitigation study which is one of the inputs to the preparation the CELP. This modelled the traffic impact of various distributions of development around Crewe, to test if the highway network could cope. Key junctions across the network were identified and the impact of additional traffic was graded from dark Green (up to 0-30 seconds delay), light Green (30-120 seconds delay), Yellow (120-300 seconds delay), Orange (300-600 seconds delay) and Red (more than 600 seconds delay).
- 10.102 Option 2 included 1,261 houses at south Crewe /Rope (including the appeal site), and Option 6 was seen to be “testing the network to destruction”, with the traffic for 2,391 dwellings to the south of Crewe through the B5071 corridor. The modelling identified Junction 5 as a key junction (but not Junction 4). The results of the modelling showed that the effect on the B5071 corridor would be up to 120 seconds (ie a ‘light Green’ categorisation) [6.82, 6.83].
- 10.103 That modelling was for strategic purposes and might be regarded as too coarse to assess the impacts on specific junctions. More detailed evidence was presented at the inquiry, which addressed the likely impact on Junctions 4 and 5. This shows that the maximum delay on one arm of Junction 5 would be 185 seconds, with other arms experiencing 177 and 174 second delays (the present maximum delay is 108 seconds). 185 seconds would be more than a 3 minute delay on a junction which has a modelled two minute cycle time. However, taking account of the Impact and Mitigation study, the Council has accepted that delays of up to 5 minutes (300 seconds) would be acceptable [6.82, 6.89].

10.104 The appellants acknowledge that the additional traffic would exacerbate the delays at the Junction 4, but contend that traffic lights – or, if traffic lights are not seen to be beneficial, some other means of traffic management - would offer some improvement. The Council disagree that traffic management at this junction would be sufficient mitigation to justify withdrawing its objections to the appeal scheme. However, in the event that the appeal is allowed, the appellants have offered a contribution towards the installation of traffic lights, or an alternative type of management, such that delays are minimised [6.91]. In any event, even with delays of 185 seconds, this would be within what the Council regard as “acceptable” for local plan purposes [6.82, 6.89].

10.105 Drawing these points together, allowing for the relief to local traffic conditions which would be introduced by Basford West Link Road and Crewe Green South Link Road, the residual impact of the proposed development would be additional delays to traffic at junctions in Gresty Road. Nevertheless, the junction which is said to be most affected (Junction 4) is not seen to be a key junction for traffic modelling purposes in the Impacts and Mitigation study. That is, although the proposed scheme would have a negative impact on the free flow of traffic through Junctions 4 and 5, the residual cumulative impacts would not be severe, and accordingly permission should not be refused on the grounds of an unacceptable impact on the local highway network.

4. Whether a grant of planning permission for the proposed scheme would unacceptably prejudice the preparation and adoption of the emerging Local Plan, with particular regard to distribution of housing sites and identification of a Green Belt extension.

10.106 The matter of prematurity is addressed at paragraph 21b-014 of PPG.

10.107 As noted above, the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) was written to cover the period up to 2011 [10.15]. The plan is therefore, for structural and strategic purposes at least, out of date and has to be replaced. Cheshire East Council has commenced preparation of the Cheshire East Local Plan (CELP). The CELP has been through several stages of drafts and public consultation and has reached the point where a draft has been submitted to the Secretary of State for examination [3.3]. That Examination has now commenced, with hearing sessions due to commence in September.

10.108 NPPF emphasises that the planning system should be “genuinely plan-led, empowering local people to shape their surroundings”¹⁸⁰. It goes on to say that local plans should reflect the vision and aspirations of local communities¹⁸¹. The expectation is that local plans should “indicate broad locations for strategic development”¹⁸² and “identify land where development would be inappropriate, for instance because of its environmental or historic significance”¹⁸³. That is, the initiative for identifying locations for new

¹⁸⁰ NPPF paragraph 17: 1st bullet point.

¹⁸¹ NPPF paragraph 150

¹⁸² NPPF paragraph 157: 4th bullet point

¹⁸³ NPPF paragraph 157: 7th bullet point

development and, just as importantly, where development should not take place, ought to lie with the local community. There is no neighbourhood plan either adopted or in preparation for Shavington and the surrounding area, and thus it is CELP, as endorsed by the democratically elected Members of the Council, which represents the most up-to-date expression of local preferences and intentions – albeit only as a draft plan going through Examination.

- 10.109 There is a tension where there is no adopted up to date local plan – as in this present case. In this appeal I have come to the view that the Council cannot demonstrate that it has a 5-years supply of deliverable housing sites, which would trigger the presumption in favour of sustainable development set out at paragraph 49 of NPPF.
- 10.110 The key phrase here is the need to assess whether relevant policies of the BCNRLP (my emphasis) can be considered out of date. With BCNRLP housing numbers intended to carry forward the intentions of the Regional Strategy, and then only until 2011 that aspect of the plan is clearly out of date and so too are any policies which identify areas for new development and – as a corollary – those areas where development should be resisted.
- 10.111 However, it would not be correct to consider these restrictive policies wholly irrelevant. Whereas Policy NE.2 is a policy which seeks to resist development in the open countryside, that is still an objective which is in accordance with the core planning principles of NPPF¹⁸⁴. That is, the restrictive urban boundary will have to be pulled back to allow more development to take place in appropriate locations where it is justified by an assessment of need and supply. In those locations Policy NE.2 would no longer apply. But beyond those new development locations, Policy NE.2 would, having regard to paragraph 215 of NPPF, remain relevant.
- 10.112 The Council recognises this circumstance and has itself allowed significant new development in locations which are covered by Policy NE.2. The most significant of these which was referred to at this inquiry was a planning permission for 1,100 new dwellings at Kingsley Fields [5.101]. Similarly, a number of housing developments have been allowed on appeal recently by Planning Inspectors in places which had been subject to Policy NE.2 protection. That is, neither the Council - nor Planning Inspectors - have adopted an 'in principle' embargo on new development until such time as the CELP has been adopted. Neither would it be correct to do so in view of the lack of a 5-year land supply, and the possibility that, in response to representations made against the CELP, modifications may have to be formulated, publicised and examined before a final version of the Plan could be adopted. When that might be is not known, but it is clearly going to be several months into the future.
- 10.113 I have come to the view that development of the proposed site would not result in unacceptable harm to the countryside – if only on the basis that the site is no more and no less prominent or sensitive than perhaps many, if not most, other urban fringe locations around Crewe. The Council is keen to

¹⁸⁴ NPPF paragraph 17: 5th bullet point

promote Crewe as a centre for economic growth [6.65] and hence – in general terms - the loss of peripheral sites such as this is inevitable, however much local residents may wish it were not so.

- 10.114 For similar reasons I have also come to the view that the consequent loss of some of the best and most versatile agricultural cannot be a bar to permitting development in this sort of location. And I come to the same view on the potential of the proposed scheme to change the context of, and the permanent loss of a proportion of, the 'important hedgerows'. Again, such changes may be matters for regret and should, if at all possible, be avoided if there are other sites which can meet the immediately identified need.
- 10.115 The proposed scheme would have an impact on the capacity and free-flow of the local highway network but this can, for the most part, be mitigated by off-site works along the A51 and A534. There is likely to be a noticeable adverse impact on the free-flow of traffic through junction 4 and 5 (as discussed above), but this too can be at least ameliorated by traffic management works. In any event, the degree of additional delays would be within what the Council have acknowledged to be "acceptable" in the work which has contributed to the evolution of the Local Plan.
- 10.116 All of the above would point to it being acceptable to permit the appeal scheme – but for the one reservation noted at paragraph 10.44 above: the loss of part of the Green Gap which lies between Crewe and Shavington.
- 10.117 The CELP is portrayed as a plan which seeks to promote Crewe as a priority growth centre [6.65], but the Council holds the view that growth should not overwhelm the recognisable independent character of Crewe. This philosophy extends to the towns and villages around Crewe, where the CELP seeks to retain and maintain a degree of separation between Crewe and its satellite settlements. This would be for urban design (or countryside protection) reasons, and for social or cultural reasons where those living in the satellite areas wish to maintain a separate identity; they do not wish to see their village absorbed into a larger urban area [7.4].
- 10.118 To support this aim, CELP includes a draft policy which would maintain and strengthen the separation. It is proposed that the Green Belt to the south east of Crewe (ie the North Staffordshire Green Belt around Stoke on Trent) should be extended so that it includes a wide swathe of land to the south and south-west of Crewe, and to the east [5.125]. This would prevent Crewe and Nantwich merging together, and would also place villages, including Shavington within the Green Belt. This is included in CELP only as a proposal for an Area of Search for Green Belt extensions: no proposed Green Belt boundaries are included in CELP. As paragraph 8.54 of CELP explains, this seen to be a matter for the Site Allocations and Development Policies Document. This is set out at Policy PG 3 of CELP and Figure 8.2 (document CD 6.1).
- 10.119 At present, the divide between Crewe and its satellite settlements is maintained by the Green Gap policy of BCNRLP (Policy NE.4), the extent of

which is shown on the BCNRLP Proposals Map¹⁸⁵. CELP Policy PG 3 effectively seeks to convert these Green Gaps into an integral part of the Green Belt, thereby strengthening the policy objective of maintaining separation.

- 10.120 At the inquiry it was made clear that the CELP Green Belt proposals are the subject of representations to be considered at the CELP Examination. Furthermore, the CELP is only seeking to establish an area of search at this time. That is, both the principle of an enlarged Green Belt and the extent over which such restrictions should apply are far from settled. It may be that the exceptional circumstances that paragraph 83 of NPPF requires to justify a change in the Green Belt boundaries will not be demonstrated [6.99]. In which case, in view of the draft status of the CELP and the uncertainty over the viability of the Plan's wishes for an extended Green Belt, let alone the precise extent, this cannot be given much weight in this appeal.
- 10.121 However, as noted above, the Green Belt proposals seek to maintain and carry forward the policy of separation which has been embodied in the Green Gap policy (BCNRLP Policy NE.4). That policy has an established pedigree in that both the principle and its boundaries were endorsed by the Inspector who conducted the Local Plan inquiry in 2001. It is a popular policy locally and one which has – for the most part – been supported and applied since at least 2001.
- 10.122 The Green Gap policy is not simply a housing restraint policy. It is a policy which seeks to retain a sense of separation between settlements which is more than just preventing built development; it is, to a large degree, a policy which seeks to satisfy a social, cultural or even psychological desire held by residents in the satellite settlements. Accordingly, Policy NE.4 need not be considered out-of-date in the terms of paragraph 14 of NPPF; its objectives and purpose are still valid and the Council seek to carry this forward into the CELP (albeit as a proposed Green Belt policy). Such an objective (if not the actual policy) is in accordance with paragraphs 154 and 157 of NPPF. In this context it would be premature to release Green Gap sites to meet an arguably short-term shortfall in housing land supply as it would result in the permanent loss of the present sense and extent of separation. The status, retention and geographical extent of the Green Gaps are for the CELP Examination to assess.
- 10.123 There is no consistent width for the Green Gap as it is defined around Crewe on the BCNRLP Proposals Map (Document CEC 21). The degree of separation between Shavington and Basford West (shown as allocation site E.3.1 on CEC 21) is in the order of 250 m; which is similar to the degree of separation which would remain should the appeal scheme be developed. That is, a Green Gap of this width is not seen to be incompatible with the objectives of Policy NE.4.
- 10.124 It is relevant to note that the Council has itself agreed to permit development in advance of the adoption of CELP, and on sites where there has been local opposition and where representations have been made. The

¹⁸⁵ Document CEC 21

most blatant of these is at Kingsley Fields for 1,100 houses [5.101]. The Council did not feel constrained to resist or withhold a decision on that scheme on grounds of prematurity [6.104]. Also, CELP proposes development on land which is presently within a Green Gap – at Sydney Road [6.103]¹⁸⁶ - and hence development in a presently defined Green Gap is not wholly unacceptable to the Council.

- 10.125 Inspectors have allowed on appeal development on Green Gap sites, including one on Rope Lane, Shavington¹⁸⁷, south of the A500 which is in the Green Gap in the vicinity of this appeal site; but it should be noted that that appeal decision pre-dates the submission version of CELP. Development has been allowed on appeal more recently (1 August 2014) on land north of Moorfields, Willaston – also within a Green Gap¹⁸⁸. That is, release of significant areas of land for housing which are not in accord with BCNRLP, and may, or may not, accord with draft proposals of CELP have been approved by the Council and Inspectors.
- 10.126 Whereas other sites in the Green Gaps have been granted planning permission, either on appeal or by the Council, these have been mostly for smaller scale schemes and which would not have such an obvious impact on the scale and purpose of the Green Gaps on those localities as the present appeal scheme.
- 10.127 To conclude on this fourth main consideration, it is my view that to allow the appeal and permit the proposed development would undermine the plan-making process insofar as it concerns the proposed Green Belt (and the interim retention of Green Gap policy NE.4), in that it would predetermine the location of new development (or its corollary - prevent the confirmation of an area where development will not be permitted) which could be seen to be central to an emerging local plan which has been submitted for examination. Whether reducing the width of the Green Gap here, to match that in other locations around Crewe, would be acceptable in principle should be a matter for the CELP Examination. In which case, planning permission for the appeal scheme would be premature.

Other Matters

- 10.128 Interested persons raised a number of points, either at the inquiry or in written submissions. I comment below on those which have not already been addressed in this Report.
- 10.129 It was claimed that the site is within the Green Belt [8.2]. The site is accepted by all parties to the appeal to be in a Green Gap, but it is not in the North Staffordshire Green Belt. That is, it is not covered by Green Belt policies nor do the particular considerations set out at paragraphs 79-92 of NPPF apply in this case.

¹⁸⁶ Document CD 6.1, Site CS 5, pp 207-209

¹⁸⁷ Document GCS 1, Appendix 3

¹⁸⁸ Document HG 24

- 10.130 It was argued that the Green Gap between Shavington and Crewe is a lung for the area [7.3]. Other than it being undeveloped at present, the appeal site does not have public access for recreation or even walking on public footpaths. The site's value as a 'lung' is therefore limited, for practical purposes, to only it being part of a visual break between Shavington and Crewe.
- 10.131 Any increase in traffic has the potential to add to air pollution. Crewe is being proposed as a centre for growth in the CELP and an increase in air pollution attributable to the expansion of the urban area could be an inevitable consequence of that strategy. If that is a supportable strategy overall – and it is one being actively promoted by the Council – then an increase in air pollution cannot be regarded as an overriding objection.
- 10.132 The highway concerns relating to the width of, and pedestrian safety on, the roads close to the appeal site expressed by local residents are not supported by the Council's highway evidence. The proposed scheme takes into account the likely increase in traffic on local roads and provision is made for improvements to matters such as footpaths in the vicinity of the school.
- 10.133 The developer is aware of the potential flood risk associated with Swill Brook and the scheme is designed to avoid exacerbating present problems. Planning conditions on a planning permission for the scheme can require the prior consideration of details of flood protection on the site and the need to avoid any potential consequent impacts in the wider area.
- 10.134 Service providers were consulted as part of the application process and these had the opportunity to point out if they would not be able to support the proposed scheme, or that developer contributions would be required to accommodate any increased demand. No specific evidence – in terms of current capacity and numbers of users - was brought to the inquiry by those raising these points to demonstrate which services are at capacity.
- 10.135 The application is only in outline and details such as proximity to the school of parking areas and playing fields are matters which can be addressed at detail stage.
- 10.136 The opportunity to take brownfield sites before a greenfield site will be explored at the Local Plan Examination. Having said that, it is unlikely that all of the development needs within the CELP area could be met solely on brownfield land. The loss of greenfield land *per se* cannot be regarded as an overriding objection to the proposed scheme.
- 10.137 The appeal site is open countryside at present and it is highly likely that it supports some wildlife. The applicant is aware of that possibility and has made accommodation for appropriate mitigation of both legally protected and unprotected species as part of the scheme. This can be reinforced through planning conditions.
- 10.138 A planning condition can be attached to a planning permission for the scheme to ensure minimal disturbance to local residents arising from works associated with the construction phase.

- 10.139 More development in and around Crewe will almost certainly bring an increased demand for goods and services in the town. The capacity of town centre car parks to adequately meet that increased demand is not a matter for this planning application; that is a general concern which the Council would have to keep under review having regard to its expressed support for a growth strategy for Crewe.
- 10.140 Whether a pub or retirement village is needed is a commercial judgement for the developer. It is not a planning matter if it is thought that the scheme includes what some think to be commercially unviable elements.

Planning Balance

- 10.141 Whereas paragraph 49 of NPPF sets out a presumption in favour of sustainable development in the absence of a 5-year land supply, that presumption has to be considered in the context of the caveat given at paragraph 14 of NPPF, which says that, where the relevant development plan policies are out-of-date, then permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 10.142 The Council has been prepared to permit development on other sites identified in the draft CELP and those decisions could also be seen to be premature. However, the sites have been consulted upon and gained support – albeit many are still the subject of unresolved representations. The appeal site is not included as a preferred site in CELP, and therefore does not have the same degree of support locally.
- 10.143 As noted above, I consider that the proposed scheme would not result in unacceptable harm to the countryside and ‘important hedgerows’, no unacceptable loss of best and most versatile agricultural land, and the traffic impact would be acceptable, allowing for the offered mitigation. Whereas the scheme would narrow the present separation between Crewe and Shavington, more than 200m separation would remain, with the visual and psychological separation reinforced by the route of the A500 dual carriageway.
- 10.144 Particular benefits claimed for the proposed scheme are noted in Document SB 1 at paragraph 16.13. In summary, these are a contribution to the supply of deliverable housing sites within the 5 year period, so as to help address the shortfall. There would be between 231 and 264 affordable homes – of which there is a notable shortfall in Cheshire East. There would be specialist accommodation for the elderly. The development would be close to Crewe and would minimise journeys for access to goods, employment and services; all of which would be supported by a subsidised bus service. The scheme would include facilities to support the community on the development, including shops, a pub, a primary school, recreation provision, allotments and some employment in a care village. The public would have access to what are categorised as ‘important hedgerows’. The scheme would generate a New Homes Bonus income of £1.5 million per annum [6.53].

- 10.145 Many of these points would indeed be benefits, but these would not be unique to this location. That is, houses, affordable homes, community facilities and associated jobs could be the outcome of development on almost any large site around Crewe. Some of the claimed benefits are simply support for needs arising from the development itself, or mitigation for harm which would only arise if the development is permitted. If the development is not permitted then no mitigation would be necessary.
- 10.146 The benefits, however extensive they are, have to be weighed against the arguably premature loss of part of the Green Gap between Crewe and Shavington, which might be best considered in the context of the overall strategy of the CELP and its proposal to at least retain the Green Gaps, or possibly upgrade them as part of a Green Belt extension around Crewe.
- 10.147 The idea of an extended Green Belt around Crewe may be very uncertain at this stage, but the Green Gap has been part of a long established and well-recognised local strategic policy shaping the area in which people live, and establishing areas where it is not appropriate to build. That principle is included in NPPF as being part of sustainable development. CELP does not propose significant re-drawing the Green Gap boundaries in order to release land for development – unlike the circumstances at Rothely / Mountsorrel [6.14, 6.15].
- 10.148 The question remains of whether the shortfall in housing land supply is so acute that it justifies the premature permanent reduction of this area of Green Gap at this time. The retention, role and extent of the Green Gaps and possible extension of the Green Belt are points which are to be explored at the current Local Plan Examination. A decision to allow development here could reasonably be seen to pre-empt or prejudice the outcome of the Local Plan Examination. Having said that, it cannot be overlooked that the Council itself has allowed development elsewhere around Crewe on Green Gap sites [6.13].

Overall Conclusion

- 10.149 Drawing all of the above points together, the proposed scheme can be seen to be sustainable development. The social role would be represented by more housing, including affordable housing, community facilities and play areas. The economic role would be represented by jobs and investment during the construction phases and the provision of shops and services thereafter. The environmental role would be represented by good accessibility, minimal landscape intrusion, provision of additional landscape planting, maintenance of important hedgerows and management of the flood risk from Swill Brook. But deferring a commitment to the reduction of an area of Green Gap in advance of the conclusion of the Local Plan Examination could also represent sustainable development, according to paragraphs 154 and 157 of NPPF, in the context of what is said at paragraph 6 of NPPF.
- 10.150 Whereas the scheme can be seen to include many benefits, it is my view that these do not significantly and demonstrably outweigh the adverse impacts of approving the development.

- 10.151 The balance is very close and can be reduced quite simply to a choice between the premature permanent loss of part of this Green Gap area and the rejection of an opportunity to address a shortfall in housing land supply. In my view, for the reasons set out above, it would be in accordance with both the NPPF and PPG to regard a planning permission for this proposed development as premature and the appeal should be dismissed.
- 10.152 If the Secretary of State disagrees with this view, then planning conditions – as discussed at Section 9 of this report and listed in the Appendix – should be attached to a planning permission.
- 10.153 As noted above [9.24, 9.25] the Section 106 unilateral undertaking includes a contribution of £250,000 for improvements to Junction 4. Whereas installing traffic lights may not be the appropriate response to managing increased flows through this junction, it is very likely that other management measures could be designed to minimise delays and improve traffic flows, and it would be reasonable and related to the development being permitted if the offered contribution were endorsed by the Secretary of State.

11. RECOMMENDATION

File Ref: APP/R0660/A/13/2209335

11.1 I recommend that the appeal be dismissed.

Geoffrey Hill

INSPECTOR

Richborough Estates

APPEARANCES

For the Local Planning Authority:

Mr Richard Humphreys QC	Instructed by Borough Solicitor
He called:	
Mr Gerard McKinney BA(Hons) MSc MCILT	Director: PTB Transport Planning Ltd.,
<i>assisted for video evidence by</i>	
Mr Andrew Sellors	Principal Transport Planner: Jacobs
Mr Jan Gomulski BA(Hons) BA MTP	Principal Landscape Architect
Mr Graham Christopher Stock BA(Hons) MA MRTPI AIEMA	Partner: Deloitte
Mr Ben Haywood BA(Hons) MA MBA MRTPI MCMi	Major Applications Team Leader
Mrs P Evans	Solicitor for Cheshire East Council
Mr J Cullen	Solicitor for Cheshire East Council

For the Appellant:

Mr Jeremy Cahill QC	Instructed by Stephen Bell, Turley Planning
He called:	
Mr John Thompson BEng MIHT CMILT	Project Director: SK Transport Planning Ltd
Mr Iain Reid DipTP DipLD MRTPI MLI	Director: Iain Reid Landscape Planning Ltd
Mr David Richard Lewis Hughes BSc(Hons) FBIAC	Managing Director: David Hughes Agricultural Consultancy Ltd
Mr Richard Morton MIfA	Principal Heritage Consultant: Cotswold Archaeology
Mr Stephen Bell BA(Hons) MTPL MRTPI	Director: Turley Planning

Interested Persons:

Sir Philip Craven	Local resident
Mr George Ray	Local resident
Mr B Silvester	Councillor, Cheshire East Borough Council

Mr D Brickhill
 Mr B Squirrell
 Mr R Farrington

Councillor, Cheshire East Borough Council
 Chairman, Rope Parish Council
 Local resident

DOCUMENTS

PROOFS OF EVIDENCE

For Cheshire East Borough Council witnesses

Mr Gerard McKinney	
GM 1	Proof of evidence including an "Executive Summary"
GM 2	Volume of appendices to proof of evidence
GM 3	2 x DVDs of morning and evening peak traffic movements
GM 4	Rebuttal proof of evidence with appendices
Mr Jan Gomulski	
JG 1	Proof of evidence
JG 2	Volume of Appendices to proof of evidence
JG 3	Summary proof of evidence
Mr Graham Christopher Stock	
GCS 1	Proof of evidence including summary and appendices
GCS 2	Rebuttal proof of evidence with appendices
Mr Ben Haywood	
BH 1	Proof of evidence
BH 2	Volume of Appendices to proof of evidence
BH 3	Summary proof of evidence
BH 4	Rebuttal proof of evidence with appendices

For HIMOR Group witnesses

Mr John Thompson	
JT 1	Proof of evidence
JT 2 (i) (ii)	2 Volumes of appendices to proof of evidence
JT 3	Summary proof of evidence
JT 4	Rebuttal proof of evidence with appendices
Mr Iain Reid	
IR 1	Proof of evidence including Summary and Conclusions

IR 2	Volume of appendices to proof of evidence
IR 3	Supplementary (rebuttal) proof of evidence with appendix
Mr Richard Morton	
RM 1	Proof of evidence including Concluding Statement
Mr David Richard Lewis Hughes	
DH 1	Proof of evidence including Conclusions
Mr Stephen Bell	
SB 1	Proof of evidence
SB 2	Volume of appendices to proof of evidence
SB 3	Summary proof of evidence
SB 4	Rebuttal proof of evidence with appendices

SUBMITTED TO THE INQUIRY AS CORE DOCUMENTS

Section CD 1. EIA Scoping

- CD 1.1 Request for a EIA Scoping Opinion (GVA, 4 March 2013)
- CD 1.2 Environmental Impact Assessment Scoping Report (GVA, March 2013)
- CD 1.3 Cheshire East Council Formal Scoping Response (Cheshire East Council, 7 June 2013)

Section CD 2. Original Application Documents (July 2013)

- CD 2.1 Application Covering Letter to Cheshire East Council (GVA, 12 July 2013)
- CD 2.2 Application Forms, Certificates and Notices (12 July 2013)
- CD 2.3 Site Location Plan (e*SCAPE drawing no. 012_019_P001)
- CD 2.4 Application Site Plan (e*SCAPE drawing no. 012_019_P002)
- CD 2.5 Outline Parameters Plan (e*SCAPE drawing no. 012_019_P031 Rev D)
- CD 2.6 Indicative Phasing Plan (e*SCAPE drawing no. 012-019-P034)
- CD 2.7 Spatial Design Code (e*SCAPE, July 2013)
- CD 2.8 Illustrative Masterplan (e*SCAPE drawing no. 012_019_P021 Rev C)
- CD 2.9 Indicative Phasing Plan (e*SCAPE drawing no. 012_019_P034)
- CD 2.10 Environmental Statement: Volume 1 – Main Text (GVA, July 2013)
- CD 2.11 Environmental Statement: Volume 2 – Technical Appendices (GVA, July 2013)

- CD 2.12 Environmental Statement: Non-Technical Summary (GVA, July 2013)
- CD 2.13 Planning Statement (GVA, July 2013)
- CD 2.14 Statement of Community Involvement (GVA, July 2013)
- CD 2.15 Design and Access Statement (e*SCAPE, July 2013)
- CD 2.16 Sustainability and Climate Change Statement (RSK, 5 July 2013)
- CD 2.17 Outline Utility Strategy (WSP, July 2013)
- CD 2.18 Officer's Report to the meeting of the Strategic Planning Board on 5 March 2014
- CD 2.19 Minutes of the meeting of the Strategic Planning Board on 5 March 2014

Section CD 3. Amended Application Documents (May 2014)

- CD 3.1 Covering letter to Planning Inspectorate (Turley, 12 May 2014)
- CD 3.2 Outline Parameters Plan (e*SCAPE drawing no. 012-019-P031 Rev E)
- CD 3.3 Illustrative Masterplan (e*SCAPE drawing no. 012-019-P021 Rev D)
- CD 3.4 Gresty Oaks Spatial Design Code – May 2014 (e*SCAPE ref. 12/019/004/Final)
- CD 3.5 Covering letter to Planning Inspectorate (Turley, 22 May 2014)
- CD 3.6 Stage 1 Road Safety Audit: Proposed Accesses Crewe Road and Rope Lane, Crewe (Waterman Aspen, April 2014)
- CD 3.7 RSA Stage 1 Designer's Response (SK Transport Planning, May 2014)
- CD 3.8 Rope Lane Access and Traffic Calming Arrangement (SK Transport Planning drawing no. SK21220-004 Rev A)
- CD 3.9 Crewe Road Access General Arrangement RSA Amendments (SK Transport Planning drawing no. SK21220-010)
- CD 3.10 Addendum to the Environmental Statement (Turley, June 2014)

Section CD 4. Development Plan

- CD 4.1 Borough of Crewe and Nantwich Replacement Local Plan 2011 – Written Statement (February 2005)
- CD 4.2 Borough of Crewe and Nantwich Replacement Local Plan 2011 – Proposals Map (February 2005)
- CD 4.3 Secretary of State's Saving Direction (Government Office for the North West, 14 February 2008)

- CD 4.4 Inspector's Report of Public Local Inquiry into Objections to the Borough of Crewe and Nantwich Replacement Local Plan 2011 (Planning Inspectorate, 5 November 2003)

Section CD 5. National Policy Documents and Guidance

- CD 5.1 National Planning Policy Framework (Communities and Local Government, March 2012)
- CD 5.2 Extracts from Planning Practice Guidance (Communities and Local Government, March 2014)
- CD 5.3 'Planning for Growth' Written Statement to Parliament, The Rt Hon Greg Clark MP, Minister of State for Decentralisation (23 March 2011)
- CD 5.4 Laying the Foundations: a housing strategy for England (Communities and Local Government, 21 November 2011)
- CD 5.5 'Housing and Growth' Written statement to Parliament, The Rt Hon Eric Pickles MP, Communities Secretary (6 September 2012)
- CD 5.6 HS2 Plus: A Report by David Higgins (March 2014)
- CD 5.7 Plan for Growth (HM Treasury, March 2011)

Section CD 6. Other Local Documents

- CD 6.1 Cheshire East Local Plan Strategy: Submission (Cheshire East Council, March 2014)
- CD 6.2 Cheshire East Local Plan Strategy: Policies Map (Cheshire East Council, March 2014)
- CD 6.3 Interim Planning Policy: Release of Housing Land (Cheshire East Council, February 2011)
- CD 6.4 Interim Planning Statement on Affordable Housing (Cheshire East Council, February 2011)
- CD 6.5 Crewe: High Growth City Prospectus, September 2013
- CD 6.6 Vulnerable and Older People's Housing Strategy (Cheshire East Council, May 2014)
- CD 6.7 North West of England Plan: Regional Spatial Strategy to 2021 (Government Office for the North West, September 2008)
- CD 6.8 The North West Plan: Submitted Draft Regional Spatial Strategy for the North West of England – Technical Appendix (North West Regional Assembly, January 2006)
- CD 6.9 Cheshire East Housing Strategy: Moving Forward 2011-2016 (Cheshire East Council)
- CD 6.10 Ambition for All: Cheshire East's Sustainable Community Strategy 2010 to 2025 (Cheshire East Council, 2010)

- CD 6.11 The Cheshire Historic Landscape Characterisation (Cheshire County Council and English Heritage, November 2007)
- CD 6.12 Shaping our Future: A Development Strategy for Jobs and Sustainable Communities (Cheshire East Council, 2013)
- CD 6.13 Cheshire East Local Plan – Pre-Submission Core Strategy – Schedule of Representations by HIMOR Group Ltd (December 2013)
- CD 6.14 Representations on behalf of HIMOR Group in respect of Cheshire East Local Plan Strategy Submission (April 2014)
- CD 6.15 Document IR 3 (Cheshire and Warrington Enterprise Partnership, March 2014)
- CD 6.16 Mr Adrian Fisher's Rebuttal Evidence to Audlem Road inquiry (PINS ref. APP/R0660/A/13/2204723) (undated)
- CD 6.17 Appendices to Mr Adrian Fisher's Rebuttal Evidence to Audlem Road inquiry (PINS ref. APP/R0660/A/13/2204723) (undated)
- CD 6.18 Officer's Report to the meeting of the Strategic Planning Board on 9 December 2013 in respect of Land to the north east of Sydney Road, Crewe (LPA ref. 13/2055N)

Section CD 7. Evidence Base Documents

- CD 7.1 Draft Crewe Town Strategy (Cheshire East Council, August 2012)
- CD 7.2 Cheshire East Strategic Housing Market Assessment 2013 Update (September 2013)
- CD 7.3 Draft Core Strategy & CIL Viability Assessment (NCS, October 2013)
- CD 7.4 All Change for Crewe: High Growth City (Cheshire East Council, September 2013)
- CD 7.5 New Green Belt and Strategic Open Gap Study (Envision, September 2013)
- CD 7.6 Cheshire East Strategic Housing Land Availability Assessment Update (Cheshire East Council, February 2013)
- CD 7.7 Five Year Housing Land Supply Position Statement (Cheshire East Council, December 2013)
- CD 7.8 Local Plan Strategy: Housing Background Paper (Cheshire East Council, March 2014)
- CD 7.9 Local Plan Strategy Background Paper: Population Projections and Forecasts (Cheshire East Council, March 2014)
- CD 7.10 Infrastructure Delivery Plan (Cheshire East Council, March 2014)
- CD 7.11 Green Infrastructure Action Plan for Crewe (TEP for Cheshire East Council, 2013)

CD 7.12 All Change for Crewe: A Prospectus for Crewe (Cheshire East Council, March 2012)

Section CD 8. Correspondence

Pre-Application

- CD 8.1 CPRE Cheshire Letter of Support (CPRE, 7 January 2013)
- CD 8.2 Local Planning Authority Pre-Application Advice (Cheshire East Council, 17 April 2013)
- CD 8.3 Places Matter! Design Review Report (Places Matter!, 28 May 2013)

Post-Application

- CD 8.4 Local Planning Authority Receipt of Application (Cheshire East Council, 16 July 2013)
- CD 8.5 Places Matter! Design Response (Places Matter!, 19 July 2013)
- CD 8.6 Crewe Town Council (29 July 2013)
- CD 8.7 Cheshire East Council Landscape Architect (26 September 2013)
- CD 8.8 Cheshire East Council Public Rights of Way (1 August 2013)
- CD 8.9 Cheshire East Council Greenspace (7 August 2013)
- CD 8.10 Councillor Brian Silvester, Willaston & Rope Ward UKIP Councillor (9 August 2013)
- CD 8.11 Cheshire East Council Archaeologist (13 August 2013)
- CD 8.12 Natural England (14 August 2013)
- CD 8.13 Cheshire East Council Environmental Health (15 August 2013)
- CD 8.14 Willaston Parish Council (20 August 2013)
- CD 8.15 Environment Agency (21 August 2013)
- CD 8.16 Rope Parish Council (22 August 2013)
- CD 8.17 Shavington Cum Gresty Parish Council (26 August 2013)
- CD 8.18 Cheshire East Council Countryside Access Officer (28 August 2013)
- CD 8.19 Cheshire East Council Trees & Forestry (4 September 2013)
- CD 8.20 Environment Agency (23 September 2013)
- CD 8.21 Cheshire East Council Strategic Highways and Transport Manager (16 October 2013)
- CD 8.22 Cheshire East Council Education (17 October 2013)
- CD 8.23 Applicant response to Consultee Comments (GVA, 18 October 2013)
- CD 8.24 Applicant response to Draft Consultation Response of the Strategic Highways and Transportation Manager (SK Transport Planning, 21 October 2013)

- CD 8.25 United Utilities (29 November 2013)
- CD 8.26 Cheshire East Council Nature Conservation (undated)

Section CD 9. Relevant Secretary of State / Appeal Decisions

- CD 9.1 SoS Decision in respect of Land off Abbey Road and Middlewich Road, Sandbach, Cheshire (APP/R0660/A/10/2141564) (17 October 2013)
- CD 9.2 Appeal Decision in respect of Land between Station Road and Dudley Road, Honeybourne, Worcestershire (APP/H1840/A/12/2171339) (24 August 2012)
- CD 9.3 Appeal Decision in respect of Land north of Congleton Road, Sandbach, Cheshire (APP/R0660/A/13/2189733) (18 October 2013)
- CD 9.4 Appeal Decision in respect of Land off Sandbach Road North, Alsager, Cheshire (APP/R0660/A/13/2195201) (18 October 2013)
- CD 9.5 Appeal Decision in respect of Elworth Hall Farm, Dean Close, Sandbach, Cheshire (APP/R0660/A/13/2196044) (11 April 2014)
- CD 9.6 Appeal Decision in respect of Hassall Road, Alsager, Stoke-on-Trent (APP/R0660/A/12/2188001) (12 December 2013)
- CD 9.7 Appeal Decision in respect of Land at Crewe Road, Crewe, Cheshire (APP/R0660/A/12/2170820) (29 January 2014)
- CD 9.8 Appeal Decision in respect of Land at Gresty Green, Gresty Green Road, Shavington, Crewe (APP/R0660/A/12/2194875) (3 February 2014)
- CD 9.9 Appeal Decision in respect of Land off The Moorings, Congleton, Cheshire (APP/R0660/A/12/2188/604) and Land off Goldfinch Close and Kestrel Close, Congleton, Cheshire (APP/R0660/A/12/2188605) (3 February 2014)
- CD 9.10 SoS Decision in respect of Land at Burgess Farm, Hilton Lane, Worsley, Manchester (APP/U4230/A/11/2157433) (16 July 2012)
- CD 9.11 Appeal Decision in respect of Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Congleton (APP/R0660/A/13/2192192) (12 February 2014)
- CD 9.12 Appeal Decision in respect of Land between Leasowes Road and Laurels Road, Offenham, Worcestershire (APP/H1840/A/13/2203924) (7 February 2014)
- CD 9.13 Appeal Decision in respect of Land South of Moira Road, Ashby-de-la-Zouch (APP/G2435/A/13/2192131) (30 May 2013)
- CD 9.14 SoS Decision in respect of Highfield Farm, Tetbury, Gloucestershire (APP/F1610/A/11/2165778) (13 February 2013)

- CD 9.15 SoS Decision in respect of Land off Mountsorrel Lane, Rothley, Leicestershire (APP/X2410/A/13/2196928 and APP/X2410/A/13/2196929) (8 April 2014)
- CD 9.16 Appeal Decision in respect of Land East of Wolvey Road, Three Pots, Burbage, Leicestershire (APP/K2420/A/13/2202261) (3 January 2014)
- CD 9.17 Appeal Decision in respect of Rope Lane, Shavington, Crewe, Cheshire (APP/R0660/A/12/2173294) (28 November 2012)
- CD 9.18 Report to the SoS for Transport relating to Cheshire East Borough Council (Crewe Green Link Road South) Compulsory Purchase Order 2013 (DPI/R0660/13/14) (3 September 2013)

Section CD 10. Relevant High Court / Court of Appeal Judgments

- CD 10.1 High Court judgment in respect of Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council [2013] EWHC 2678 (Admin) (5 September 2013)
- CD 10.02 Court of Appeal judgment in respect of Hunston Properties Ltd v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 (12 December 2013)
- CD 10.3 High Court judgment in respect of South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Limited [2014] EQHC 573 (Admin) (10 March 2014)
- CD 10.4 High Court judgment in Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) (30 April 2014)
- CD 10.5 Cotswold District Council v Secretary of State for Communities and Local Government, Fay and Son Limited; Cotswold District Council v Secretary of State for Communities and Local Government, Hannick Homes and Development Limited; The Queen on the application of Cotswold District Council v Secretary of State for Communities and Local Government v Hannick [2013] EWHC 3719 (Admin) (27 November 2013)
- CD 10.6 Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government, Cornwall Council [2012] EWHC 914 (Admin) (4 April 2012)
- CD 10.7 High Court judgment in respect of Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government, Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin) (19 March 2014)

- CD 10.8 High Court judgment in respect of Anita Colman v Secretary of State for Communities and Local Government, North Devon District Council, RWE Npower Renewables Limited [2013] EWHC 1138 (Admin) (9 May 2013)
- CD 10.9 South Northamptonshire Council v Secretary of State for Communities and Local Government, Robert Plummer [2013] EWHC 4377 (Admin) (10 December 2013)
- CD 10.10 Tewkesbury Borough Council v SoS, Comparo Limited, Welbeck Strategic Land LLP [2013] EWHC 286 (Admin) (20 February 2013)

Section CD 11. Traffic and Highways Documents

- CD 11.1 Guidance on Transport Assessment (Department for Transport, 2007)
- CD 11.2 Local Sustainable Transport Fund Bid (Cheshire East Council)
- CD 11.3 From Rail Town to High Speed Rail City: A Vision for Crewe (Cheshire East Council, July 2012)
- CD 11.4 North West Sustainable Checklist (North West Development Agency)
- CD 11.5 Local Transport Plan 3: 2011 – 2026 (Cheshire East Council, 2011)
- CD 11.6 Travel Planning Guidance (Cheshire East Council)
- CD 11.7 Forecasting Report: Crewe Green Link Road South Transport Model (MVA, 2011)
- CD 11.8 Local Authority Major Schemes Development Pool: Expression of Interest – Crewe Green Link Road South (Cheshire East Council)
- CD 11.9 Crewe Green Link Road South: Best And Final Funding Bid (Cheshire East Council, 2011)
- CD 11.10 Design Manual for Roads and Bridges TD42/95 Geometric Design of Major/Minor Priority Junctions (Department for Transport, January 1995)
- CD 11.11 Design Manual for Roads and Bridges TD50/04 The Geometric Layout of Signal Controlled Junctions and Signalised Roundabouts (Department for Transport, November 2004)
- CD 11.12 Manual for Streets (Department for Transport, 2007)
- CD 11.13 Manual for Streets 2 (Department for Transport, 2010)
- CD 11.14 Making Residential Travel Plans Work (Department for Transport, 2005)
- CD 11.15 Smarter Choices: Influencing the way we travel (Department for Transport, 2005)
- CD 11.16 Making Personal Travel Planning Work: Case Studies (Department for Transport, 2007)

- CD 11.17 Providing for Journeys on Foot (Institution of Highways & Transportation, 2000)
- CD 11.18 Planning for Public Transport in New Developments (Institution of Highways & Transportation, 1999)
- CD 11.19 TRICS Good Practice Guide (JMP, 2012 and 2013)
- CD 11.20 National Travel Survey Table NTS0502 (Department for Transport, 2012)
- CD 11.21 Cheshire East Transport Models Review: Summary Highway Impacts and Mitigation Proposals for Local Plan Strategy – Final (Cheshire East Council, May 2014)
- CD 11.22 Crewe: Cheshire East Local Plan Impacts and Mitigation Strategy – Final (Cheshire East Council, May 2014)
- CD 11.23 Crewe Station Car Park Transport Assessment (MVA)
- CD 11.24 Update Report to the meeting of the Strategic Planning Board on 6th November 2013
- CD 11.25 Technical Note 1: Trip Generation and Assignment (SK Transport Planning, 5th March 2013)
- CD 11.26 Technical Note 2: Revised Trip Generation Method (SK Transport Planning, 27th March 2013)
- CD 11.27 Basford West Residential Transport Assessment (Waterman Transport & Development Ltd, January 2013)
- CD 11.28 CEC Officer's Report to Strategic Planning Board meeting on 14 August 2013 in respect of Basford West
- CD 11.29 Extracts from ARCADY 6 User Guide (for drive-on-the-left) (TRL Limited, 2004)

Section 12. Landscape and Visual Impact Documents

- CD 12.1 Extracts from Guidelines for Landscape and Visual Impact Assessment, Third Edition (Landscape Institute and Institute of Environmental Management and Assessment, 2013)
- CD 12.2 Landscape Character Assessment: Guidance for England and Scotland (The Countryside Agency / Scottish Natural Heritage, 2002)
- CD 12.3 National Character Area Profile 61: Shropshire, Cheshire and Staffordshire Plain (Natural England, April 2014)
- CD 12.4 Extracts from Cheshire Landscape Character Assessment in respect of Lower Farms and Woodlands (LFW) Landscape Character type and LFW 7: Barthomley Character Area (Cheshire County Council, November 2008)
- CD 12.5 National Infrastructure Planning Advice Note 9: The Rochdale Envelope (Planning Inspectorate, 2012)

Section CD 13. Appeal and Inquiry Documents

- CD 13.1 Appeal Form
- CD 13.2 Appellant's Statement of Case (GVA, November 2013)
- CD 13.3 LPA's Statement of Case (Rule 6 Statement) (Cheshire East Council, undated)
- CD 13.4 Appellant's Supplementary Statement of Case (Turley, March 2014)

HIMOR GROUP DOCUMENTS

- HG 1 Mr Jeremy Cahill QC Opening Statement
- HG 2 Draft s.106 Unilateral Undertaking (*superseded by Document HG 23*)
- HG 3 Draft s.106 Agreement (*superseded by Document HG 18*)
- HG 4 Department for Transport Circular 02/2013
- HG 5 Note confirming application plans and supporting documents
- HG 6 Copy of circular letter of Councillor B Silvester
- HG 7 Plans of comparison sites
- HG 8 Letter sent to Local Plan Examination team 23/07/14
- HG 9 Paper from Town and Country Planning Association – "New estimates of housing demand and need in England 2011-2031"
- HG 10 DCLG updating household projections to 2011 base
- HG 11 6 plans identifying heritage assets, landscape features, historic field boundaries
- HG 12 Schedule of 5 year housing land supply
- HG 13 5 year housing land supply summary
- HG 14 Appeal decision: Crewe Road, Shavington - 2210660
- HG 15 Appeal decision: 144 Audlem Road - 2204971
- HG 16 Draft planning conditions
- HG 17 Appeal decision: Close Lane - 2203282
- HG 18 Certified copy of s.106 Agreement (*superseded by Document HG 29*)
- HG 19 High Court decision – Dartford Borough Council [2014] EWHC 2636 (Admin)
- HG 20 Committee report relating to Kingsley Fields application
- HG 21 Written response to written representations made by interested persons prior to the inquiry opening
- HG 22 Plan of hedgerows across site and potential areas of loss

HG 23	Draft s.106 Unilateral Undertaking (<i>superseded by Document HG 30</i>)
HG 24	Appeal Decision: Land North of Moorfields – 2211721
HG 25	Mr Reid's note in response to Mr Gomulski's post-completion assessment (Document CEC 31)
HG 26	Mr McKinney's technical note
HG 27	Mr Thompson's response to Mr McKinney's note (Document HG 26)
HG 28A	Appeal Decision: Land off Hind Heath Road – 2212992
HG 28B	Costs Decision on application by Richborough Estates Partnership LLP, for Appeal 2212922
HG 29	Certified copy of s.106 Agreement
HG 30	s.106 Unilateral Undertaking

CHESHIRE EAST BOROUGH COUNCIL DOCUMENTS

CEC 1	Mr Richard Humphreys QC opening Statement
CEC 2	Core Document CD 2.11 extract: Environmental Statement Volume 2 Technical Appendices (GVA 2013) - Appendices H, I, J, K
CEC 3	Extract from Design Manual for Road and Bridges (appendix B – Local Model Validation Report)
CEC 4	Identity of extracts from Mr Mc Kinney's DVD clips identifying times and locations
CEC 5	Extract from Transport Assessment appendix L
CEC 6	Extract from Transport Assessment appendix M
CEC 7	Letter withdrawing putative reasons for refusal 5 and 6
CEC 8	Sites of objections to 2003 Local Inquiry Plan
CEC 9	Extract from Short Titles Act 1896
CEC 10	Copy of Hedgerow Regulations Guidance 1997
CEC 11	Hedgerow Regulations 1997: S1-1997-1160
CEC 12	Summary of Council's Housing Land Supply Position 25th July 2014
CEC 13	Schedule of disputed sites: agreed note 25th July 2014
CEC 14	Summary of Council Land Supply position 25th July 2014
CEC 15	Summary of Council Land Supply position 25th July 2014; tables 90, 91 and 100
CEC 16	Updated position statement on completions 25th July 2014

- CEC 17 Closing submissions on appeal 2204971 on behalf of CEBC (R Humphreys QC)
- CEC 18 Closing submissions on behalf of the appellant for 144 Audlem Road (V Fraser QC)
- CEC 19A Response to CEBC local plan Inspector's request for further information 18th July 2014
- CEC 19B Annex to go with 19A
- CEC 20A Correspondence relating to Bovis Homes and Richborough Estates (Build Rates)
- CEC 20B Correspondence relating to Bovis Homes and Richborough Estates (Build Rates)
- CEC 20C Correspondence relating to Bovis Homes and Richborough Estates (Build Rates)
- CEC 21 Borough of Crewe and Nantwich Replacement Local Plan 2011 Proposals Map
- CEC 22 Appeal Decision 2203883 – Hunter's Lodge Hotel
- CEC 23 CIL Statement
- CEC 24 Saving Direction for Crewe and Nantwich Local Plan policies
- CEC 25 Extracts from 2003 Local Plan Inspector's Report identifying objection sites
- CEC 26 Written response to HIMOR Group's application for costs (filed in the Costs Application folder on the Appeal File)
- CEC 27 Note prepared by Mr Stock on Close Lane decision
- CEC 28 Note prepared by Mr McKinney and Mr Thompson on traffic modelling
- CEC 29 Note prepared by Mr Stock on unimplemented planning permissions
- CEC 30 SHLAA period 4-year schedule – which includes an element of double counting
- CEC 31 Mr Gomuilski's post-completion landscape impact assessment of the proposed scheme
- CEC 32 Plan showing application for proposed next phase of Rope Lane development.
- CEC 33 Response to Letter sent to Local Plan Examination team 23/07/14 (Document HG 08).
- CEC 34 Letter of 22 August 2014 explaining the justification for the figure included in the s.106 Agreement for the primary school.

CORRESPONDENCE and DOCUMENTS SUBMITTED BY INTERESTED PERSONS

3P 1	Letter from Ivan Rowley with 4 photographs
3P 2	Letter from Ian Rowley
3P 3	e-mail from Sue Higgins
3P 4	e-mail from John Hancock
3P 5	Letter from Mr Squirrel – Rope Parish Council
3P 6	Lancashire Residential Road Guide put in by Mr G Ray

PLANS

Plans A.1 – A.13 are found in Section 2 of the Core Documents – as noted in the list below.

Initial Application Plans			CD No.
Plan A.1	012_019_P001	Site Location Plan	CD 2.3
Plan A.2	012_019_P002	Application Site Plan	CD 2.4
Plan A.3	012_019_P031 Rev D	Outline Parameters Plan (<i>superseded by Plan A.9</i>)	CD 2.5
Plan A.4	SK21220-004	Rope Lane Access and Traffic Calming General Arrangement (Plan 4) (<i>superseded by Plan A.10</i>)	
Plan A.5	SK21220-002 Rev A	Crewe Road Access General Arrangement (Plan 5)	
Illustrative documents supporting the application			
Plan A.6	012_019_P021 Rev C	Illustrative Master Plan (<i>superseded by Plan A.12</i>)	CD 2.8
Plan A.7	012_019_P034	Indicative Phasing Plan	CD 2.9
Plan A.8	Spatial Design Code July 2013 (<i>superseded by Plan A.13</i>)		CD 2.7
Amended drawings (not part of original application)			
Plan A.9	012_019_P031 Rev E	Outline Parameters Plan	CD 3.2
Plan A.10	SK21220-004 Rev A	Rope Lane Access and Traffic Calming General Arrangement Plan	CD3.8
Plan A.11	SK21220-010	Crewe Road Access General Arrangement RSA Amendments	CD 3.9

Amended illustrative documents supporting the application

Plan A.12	012_019_P021 Rev D	Illustrative Master Plan	CD 3.3
Plan A.13	Spatial Design Code, May 2014		CD 3.4

Plans prepared by the Inspector to identify locations referred to in this Report

Plan Insp.1	Extract from Google Maps of A534 corridor through central Crewe, identifying Junction 4 and Junction 5.		
Plan Insp.2	Ordnance Survey map extract identifying Crewe Green Roundabout and Cheerbrook Roundabout		

Richborough Estates

PLANNING CONDITIONS**General**

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the Reserved Matters") shall be submitted to the local planning authority for approval in writing before any development begins and the development shall be carried out as approved.
2. Application for approval of the Reserved Matters for the first phase of the development shall be made to the local planning authority not later than three years from the date of this permission and, for the remainder of the development hereby permitted, not later than five years from the date of this permission.
3. The development hereby permitted shall begin before the expiration of three years from the date of this permission, or no later than two years from the date of approval of the last of the Reserved Matters to be approved, whichever is the later.
4. The development hereby permitted shall be undertaken in accordance with the following plans and documents, unless other conditions on the permission indicate otherwise:

<i>Drawing No.</i>	<i>Title</i>
012-019-P001	Site Location Plan
012-019-P002	Application Site Plan
012-019-P031 Rev E	Outline Parameters Plan
SK21220-004 Rev A	Rope Lane Access and Traffic Calming General Arrangement
SK21220-010	Crewe Road Access General Arrangement RSA Amendments
012-019-P021 Rev D	Illustrative Masterplan
	Spatial Design Code May 2014

Phasing, Levels and Materials

5. The first Reserved Matters application shall include a scheme of phasing for the development. The development shall be carried out in accordance with the approved scheme unless amended by a subsequent Reserved Matters application. The phasing scheme shall identify those areas of structural landscaping to be implemented within each phase, and the timing of such implementation relative to the construction of the built development within that phase.
6. No development within a phase shall commence until details of existing ground levels, proposed ground levels and the level of proposed floor slabs for that phase have been submitted to the local planning authority for approval in

writing. Development shall be carried out in accordance with the approved details.

7. No development within a phase shall commence until samples of the materials to be used in the construction of boundary treatments and the external surfaces of the dwellings / buildings to be erected as part of that phase have been submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved details.

Drainage

8. No development within a phase shall commence until such time as a scheme to limit the surface water runoff generated by that phase and to manage the risk of flooding from overland flow of surface water has been submitted to the local planning authority for approval in writing. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
9. No development within a phase shall commence until a scheme for the disposal of foul water from that phase has been submitted to the local planning authority for approval in writing. For the avoidance of doubt, surface water must drain separately from the foul and no surface water will be permitted to discharge directly or indirectly into the existing public sewerage system. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
10. The development shall not cause any alteration in existing ground levels within the 1 in 100 year flood outline as shown in the submitted Flood Risk Assessment (prepared by Enzygo dated July 2013 ref SHF.1026.001.R.001.A), without prior authorisation of the local planning authority
11. No development within a phase shall commence until details of the finished floor levels of all proposed dwellings / buildings within that phase have been submitted to the local planning authority for approval in writing. The finished floor levels are to be set at a minimum of either;
 - a. the 1 in 100 year flood level including an allowance for climate change and 600mm freeboard to account for uncertainty; or
 - b. the 1 in 100 year flood level including an allowance for climate change and 30% blockage of the railway line culvert

whichever is the greater, based upon the flood level at the corresponding cross section (as detailed in Table 6.9 and 6.10 of the Flood Risk Assessment prepared by Enzygo dated July 2013 ref SHF.1026.001.R.001.A).

Development shall take place in accordance with the approved scheme for that phase.

Environmental protection

12. No development within a phase shall commence until a Phase II contaminated land investigation for that phase has been carried out and the results submitted to the local planning authority for approval in writing.

If the Phase II investigation for that phase indicates that remediation is necessary, then a Remediation Statement for that phase shall be submitted to the local planning authority for approval in writing. The Remediation Scheme shall be carried out in accordance with the approved details.

If remediation is required within any phase of development, prior to the first use or occupation of any part of that phase of development a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to the local planning authority for approval in writing.

13. No development within a phase shall commence until a Construction Environmental Management Plan for that phase has been submitted to the local planning authority for approval in writing. The plan shall include details of:
- a. the hours of construction work and deliveries;
 - b. area(s) for the parking of vehicles of site operatives and visitors;
 - c. area(s) for the loading and unloading of plant and materials;
 - d. storage of plant and materials used in constructing the development;
 - e. wheel washing facilities;
 - f. any piling required including, the method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - g. the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
 - h. mitigation measures in respect of noise and disturbance during the construction phase including vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - i. a scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
 - j. waste management.

There shall be no burning of materials on site during demolition / construction.

Development shall take place in accordance with the approved Construction Environmental Management Plan for that phase.

14. No dwelling within a phase shall be occupied until a Residential Travel Plan has been submitted to the local planning authority for approval in writing. The Travel Plan shall include, *inter alia*, a timetable for implementation and provision for monitoring and review. The measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

15. No commercial building shall be occupied until an Individual Travel Plan for that building / occupier has been submitted to the local planning authority for approval in writing. The Travel Plan shall promote alternative / low carbon transport options for staff and shall include suitable and measurable targets with the aim to reduce transport related emissions. The approved Travel Plan(s) shall be monitored and enforced throughout the use of the development.
16. No development within a phase shall commence until details of the Electric Vehicle Infrastructure to be installed within that phase have been submitted to the local planning authority for approval in writing. No dwelling shall be occupied until the approved infrastructure relating to that property has been fully installed and is operational. The approved infrastructure shall be installed in accordance with the approved details thereafter be retained.
17. The development shall be carried out in accordance with the recommendations of the Air Quality Impact Assessment and Noise Assessments, submitted as Chapters 9 and 10 of the Environmental Statement (GVA, July 2013).

Ecology

18. No development within a phase that will adjoin Swill Brook or Valley Brook, or ponds to be retained, shall commence until a scheme for the provision and management of buffer zones alongside Swill Brook (8-metre wide), the unnamed tributary of Valley Brook (5-metre wide) and the retained ponds has been submitted to the local planning authority for approval in writing. The scheme shall include:
 - (i) plans showing the extent and layout of the buffer zone(s), including cross-sections clearly showing the water, buffer zone and development;
 - (ii) details of any proposed planting scheme in proximity to the watercourses;
 - (iii) details demonstrating how the buffer zone(s) will be protected during the course of development and construction, and how the zone(s) will be managed / maintained over the longer term including adequate financial provision and a named body responsible for management and the production of detailed management plan;
 - (iv) details of any proposed footpaths and boundary treatments.

Thereafter the development of each phase shall be carried out in accordance with the approved scheme(s) and any subsequent amendments shall be submitted to the local planning authority for approval in writing.

The buffer zone(s) shall be free from built development including lighting, domestic gardens and formal landscaping.

19. Notwithstanding the submitted Environmental Statement (ES) chapter 15 Ecology, any future Reserved Matters application shall be supported by a revised Ecological Mitigation Strategy including updated surveys for barn owls and bats, which shall be in accordance with the recommendations of the ES. Development shall take place in accordance with the approved revised Strategy.

20. No clearance of trees, shrubs or hedgerows in preparation for (or during the course of) development shall take place during the bird nesting season (1 March -31 August inclusive) unless a nesting bird survey has been carried out by a suitably qualified person and the results submitted to the local planning authority. Should the survey indicate the presence of any nesting species, then no development shall take place within 4 metres of the nests during the period specified above.
21. No development within a phase which may affect Great Crested Newts and / or their habitat (by reference to the findings of the Environmental Statement, July 2013), shall commence until a detailed Great Crested Newt mitigation strategy for that phase has been submitted to the local planning authority for approval in writing. Development shall proceed in accordance with the approved strategy for that phase, with any amendments agreed in writing.
22. Application(s) for approval of Reserved Matters for each phase of the development shall include a Protected Species Mitigation Method Statement for that phase. Development shall take place in accordance with the approved Method Statement for that phase.

Trees, landscape and open space

23. No development within a phase shall commence until a detailed landscaping scheme for that phase has been submitted to the local planning authority for approval in writing. The scheme shall include the positions of all existing trees and hedgerows within and around the site, indications of any to be retained together with measures for their protection during the course of development, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted. The scheme shall define the timing of implementation relative to the construction of the built development (including advanced planting) and include a management method statement for the completed landscaping.
24. Subject to the provisions of condition 23, all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
25. No development within a phase shall commence (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement for that phase has been submitted to the local planning authority for approval in writing. The Method Statement(s) shall include details of the following:
 - a. a scheme (hereinafter called the approved Protection Scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, or are shown to be

retained on the approved layout, which shall be in place prior to the commencement of work;

- b. the implementation, supervision and monitoring of the approved Protection Scheme. The approved Protection Scheme shall be retained intact for the full duration of the construction of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority;
- c. a detailed Treework Specification and details of the implementation, supervision and monitoring of the approved Treework Specification;
- d. the implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved Protection Scheme;
- e. the timing and phasing of arboricultural works in relation to the approved development.

Development shall take place in accordance with the approved Method Statement for that phase.

26. The first Reserved Matters application shall include an Open Space Scheme showing all areas of open space to be provided within that phase including, where relevant, allotments, public amenity open space and equipped children's play area. The scheme shall also include details of the location, layout, size, timing of provision, proposed planting, location and specification of boundary structures, play equipment and materials.

Archaeology

27. No development within a phase shall commence until a written scheme of archaeological investigation for that phase has been submitted to the local planning authority for approval in writing. The development shall be carried out in accordance with the approved scheme for that phase.

Highways

28. Prior to the commencement of the development, construction details of the proposed access points from Crewe Road (as set out on drawing no. SK21220-010) and Rope Lane (as set out on drawing no. SK21220-004 Rev A) shall be submitted to the local planning authority for approval in writing. The works shall be carried out in accordance with the approved details.
29. Construction of the access to the site from Crewe Road (as shown in outline on drawing no. SK21220-010) shall not commence until such time as the Basford West Spine Road has been completed and brought into use.
30. No more than 350 dwellings hereby approved shall be occupied until the Crewe Road access (as shown in outline on drawing no. SK21220-010) has been constructed and brought into use.

31. No development within a phase shall commence until details of pedestrian and cycle signage for that phase has been submitted to the local planning authority for approval in writing. The scheme shall include signage for shared routes for pedestrians and cyclists through the site and a timetable for implementation. The approved scheme shall be carried out in accordance with the approved timetable for that phase.
32. As part of the Reserved Matters applications for phases of development fronting Gresty Lane, details of the proposed pedestrian / cycleway accesses on Gresty Lane, and of any new, altered or closed access to Gresty Lane shall be submitted to the local planning authority for approval in writing. The approved works shall be carried out prior to the first occupation of the relevant phase of development hereby permitted.

Commercial uses

33. Prior to the occupation of any of the commercial uses hereby permitted, a scheme identifying noise emission limits for external fixed plant based on BS4142:1997 shall be submitted to the local planning authority for approval in writing. All external fixed plant shall be installed and operated in accordance with the approved scheme.
34. No commercial uses which would involve the handling, preparation and cooking of food shall become operational until a scheme of odour / noise control detailing the filtration and extraction system to control the discharge of odours and fumes arising from food handling, preparation and cooking has been submitted to the local planning authority for approval in writing. The approved control measures shall be implemented in full and retained thereafter.
35. Prior to installation, details of any external lighting to be installed on the commercial premises hereby permitted shall be submitted to and approved in writing by the local planning authority. The details shall include the location, height, design and luminance of any lighting and minimise potential harm to amenity caused by light spillage on adjoining properties. The lighting shall be installed and operated in accordance with the approved details.

Retail floorspace

36. The total gross floorspace to be used for the purposes of uses within Class A1 (retail) of the Town and Country Planning (Use Classes) Order 1987 (as amended) shall not exceed 2,500 sq metres (gross).

Other matters

37. No development within a phase shall commence until details of the proposed bin storage facilities for that phase have been submitted to the local planning authority for approval in writing. The details shall ensure that bins are stored securely, and provide facilities for both recyclable and household waste storage. No dwelling shall be occupied until the bin storage facilities for that property have been constructed and are available for use in accordance with the approved details.
38. No development within a phase shall commence until details of the positions, design, materials and type of boundary treatment to be erected within that

phase have been submitted to the local planning authority for approval in writing. No dwelling within that phase of the development shall be occupied until the boundary treatment relating to that dwelling has been implemented in accordance with the approved details. The approved boundaries shall thereafter be retained as approved.

Richborough Estates



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.